

**WASHINGTON STATE
OFFICE OF ADMINISTRATIVE HEARINGS**

In the matters of:

Franklin Pierce School District

Docket No. 04-2024-OSPI-02183

Docket No. 05-2024-OSPI-02229

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND FINAL ORDER**

Agency: Office of Superintendent of
Public Instruction

Program: Special Education

Cause No. 2024-SE-0046

Cause No. 2024-SE-0073

A due process hearing was held before Administrative Law Judge (ALJ) L'Nayim Shuman-Austin on September 30, and October 1, 2, 3, 4, and 16, 2024, via zoom videoconference. The Parent of the Adult Student (Student) whose education is at issue¹, and the Student, appeared and were represented by Ryan Ford and Anna Moritz, attorneys at law. The Franklin Pierce School District (District) was represented by Sam Chalfant, attorney at law. Also present for the District was John Sander, Executive Director, Teaching & Learning Services. Rachel Simon, attorney for the District, also appeared on October 2, 2024.

STATEMENT OF THE CASE

Procedural History

The Parent filed a due process hearing request (Complaint) on April 5, 2024. The matter was assigned to ALJ Jacqueline Becker on April 16, 2024. A prehearing conference was held on May 6, 2024, and the hearing was set for September 30, 2024 and October 1-4, 2024. The Parent submitted revised issue statements on May 16, 2024. The District requested a clarification of issue statements on May 31, 2024. The Parent submitted a second draft revised issue statement on June 11, 2024. A second prehearing conference was held on June 12, 2024. The Parent submitted a second amended issue statement on June 27, 2024.

¹ To ensure confidentiality, names of parents and students are not used. The Mother's husband is not identified as a party in this matter, but participated in IEP meetings. The Mother and her husband are referred to collectively as "Parent."

On May 23, 2024, the District filed a separate due process hearing request. An Order of Consolidation and Setting Issues for Hearing, was issued on July 1, 2024. The matters were reassigned to ALJ Shuman-Austin on September 19, 2024.

The due process hearing was held as set on September 30, 2024 and October 1-4, 2024. An additional hearing date was scheduled for and held on October 16, 2024, for the testimony of a witness not available on the previously scheduled dates.

Due Date for Written Decision

The due date for a written decision in this matter is February 2, 2025.

EVIDENCE RELIED UPON

Exhibits Admitted:

District's Exhibits: D1-D50.

Parent's Exhibits: P1, P3-P11, P14, P16-P25, P27-P34, P36-P41, P43-P58, P59 (AMENDED), P61, P68-P88, P92.

Witnesses Heard:

John Sander – District Assistant Superintendent of Teaching and Learning Services

Matt Price – District Career Technical and Education (CTE) teacher

Suzanne Paul – District Literacy Specialist

Dr. David Breiger – Neuropsychologist

David Conant – District Special Education teacher

Dr. Sue Ann Bube – District educational consultant, Dynamic Educational Solutions

Bryan Zagar – District general education teacher

Brooke Ducheneaux (née Ulmer) – District Psychologist

Dr. Cindy Dupuy – Ph.D. in learning disabilities

Brian Thompson – Chair Reconstructive Language Department, Gow School (Gow)

Robin Marshman – Director, Upper School (Gow)

Jay Garvey – English Instructor (Gow)

The Student's Mother (Ms. Parent)

Charles Brown – Director of College Counseling and Math Instructor (Gow)

Adult Student

Kyle Fagan – District general education teacher

ISSUES/REMEDIES

1. The issues heard in the due process hearing, as identified in the July 1, 2024, Order of Consolidation and Setting Issues for Hearing, are:

- a. Whether the District's November 2023 reevaluation of the Student was appropriate and, if not, whether the Parent and Student are entitled to an independent educational evaluation (IEE) at public expense.
- b. Whether the District violated the Individuals with Disabilities Education Act (IDEA) and denied the Student a free appropriate public education (FAPE) by:
 - i. Failing to adequately evaluate the Student's disability-related needs from April 5, 2022, through December 11, 2023, in the areas of reading, math, written expression, and organization/behavior/study skills;
 - ii. Denying the Student special designed instruction (SDI) in math, written expression, and organization/behavior/study skills in all Individualized Education Programs (IEPs) from April 5, 2022, through February 5, 2024;
 - iii. From April 5, 2022, to the present, failing to identify the Student as eligible for specially designed instruction in the area of reading fluency;
 - iv. From April 5, 2022, to the present, failing to provide sufficient SDI minutes in the Student's IEPs in the area of basic reading;
 - v. From April 5, 2022, to the present, failing to provide sufficient SDI minutes in the Student's IEPs in the area of reading fluency;
 - vi. From April 5, 2022, to the present, failing to provide appropriate SDI in the area of basic reading;
 - vii. From April 5, 2022, to the present, failing to provide appropriate SDI in the area of reading fluency;
 - viii. From December 11, 2023, to the present, failing to provide sufficient SDI minutes in the Student's IEPs in the area of reading comprehension;
 - ix. From December 11, 2023, to the present, failing to provide appropriate SDI in the area of reading comprehension;

- x. From December 11, 2023, to the present, failing to provide sufficient SDI minutes in the Student's IEP in the area of written expression;
 - xi. From December 11, 2023, to the present, failing to provide appropriate SDI in the area of written expression;
 - xii. Failing to draft goals that are appropriately ambitious in light of the Student's unique needs and circumstances, and are reasonably calculated to provide the Student with a FAPE, for each area of disability-related need in every IEP from April 5, 2022, to the present; and
 - xiii. Failing to provide an appropriate secondary transition plan to the Student because the goals were not appropriately ambitious in every IEP from April 5, 2022, to the present.
- c. Whether the District is entitled to its requested remedy: an order finding that the District's most recent reevaluation of the Student was appropriate under the IDEA and the Parent and Student are not entitled to an IEE at public expense.
- d. And, whether the Parent and Student are entitled to their requested remedies²:
- i. Declaratory relief that the district violated the IDEA and denied the Student a FAPE;
 - ii. An order that the District's most recent reevaluation of the Student was not appropriate;
 - iii. An order that the Student's next reevaluation be an IEE by a provider of the Student's choice and that the District immediately fund a private evaluation to determine appropriate transition services and programming for the Student;
 - iv. A prospective placement at Gow, including the summer session at Gow or summer programming provided in Washington in consultation with Gow, and/or implementing Gow's reading curriculum while the Student is in Washington during the summer, funded by the District;

² The Parent requested costs and attorney's fees in their April 5, 2024, due process complaint. The ALJ does not have authority to award attorney's fees and costs.

- v. Reimbursement for tuition and all related costs associated with the Student's placement at Gow that have been paid out of pocket;
- vi. Reimbursement for all costs related to Dr. Dupuy, other than witness testimony, paid for by the Parent or the Student;
- vii. An order providing a schedule of reevaluation and IEP team meetings for the Student, including a meeting to determine appropriate transition services and programming for the Student;
- viii. An order that the District fund all outside providers' attendance and participation at meetings identified in the foregoing request for relief;
- ix. An order finding that the Parent is entitled to reimbursement for compensatory education provided to the Student through Varsity Tutors³;
- x. An order finding that the Student is entitled to compensatory education as determined to be just and equitable;
- xi. An order for District training of all District staff and administrators for each violation of the IDEA; and
- xii. Any other equitable remedies and relief, as appropriate.

FINDINGS OF FACT

In making these Findings of Fact, the logical consistency, persuasiveness and plausibility of the evidence has been considered and weighed. To the extent a Finding of Fact adopts one version of a matter on which the evidence is in conflict, the evidence adopted has been determined more credible than the conflicting evidence. A more detailed analysis of credibility and weight of the evidence may be discussed regarding specific facts at issue.

Some of the evidence presented was hearsay, which is a statement made outside of the hearing used to prove the truth of what is in the statement. In administrative hearings, hearsay evidence is admissible if, in the judgment of the presiding officer, "it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs." Revised Code of Washington (RCW) 34.05.452(1). An ALJ may not base a finding of fact exclusively on hearsay evidence unless the ALJ determines that doing so "would not unduly abridge the parties'

³ The Parent dropped this requested remedy at hearing. Tr. pp.1108 (Parent); P72; P92;

opportunities to confront witnesses and rebut evidence.” RCW 34.05.461(4). To the extent any findings of fact are based on hearsay, it is determined that such findings did not unduly abridge the parties’ opportunity to confront witnesses and rebut evidence.

The Student

1. The Student is [REDACTED].⁴ The Student has been eligible for special education services since May 2017 under the Specific Learning Disability (SLD) category using the discrepancy model in basic reading.⁵
2. Between September 2020 and January 2024, during ninth through twelfth grade, the Student attended Franklin Pierce High School (Franklin Pierce), in the District.⁶
3. On January 22, 2024, the Parent provided the District with 10-day notice of their intent to unilaterally place the Student at Gow School in New York state.⁷ The Student last attended Franklin Pierce on Tuesday, February 6, 2024.⁸ The Student began attending Gow School in February 2024, and is currently enrolled in twelfth grade.⁹

February 2022 IEP

4. On February 1, 2022, while the Student was in tenth grade, the District held a reevaluation Meeting to conduct a triennial or three-year reevaluation.¹⁰ The IEP team consisted of Penni Sulkosky, special education teacher; David J. Conant,¹¹ special

⁴ Exhibits are cited by party (“P” for Parents; “D” for District), exhibit number, and page number. For example, a citation to P1 p.5 is to the Parent’s Exhibit 1 at page 5. The hearing transcript is cited as “Tr.” with references to the page of the cited testimony. For example, a citation to Tr. 80 refers to testimony at page 80 of the transcript. P83, p.1, ¶1, p.4, ¶20; D14

⁵ D1.

⁶ P1; D1; D10.

⁷ D10.

⁸ Tr. pp.423-424 (Conant); Tr. pp.1150 (Parent).

⁹ D14; P84 at 1, ¶2; P92 at 1, ¶4.

¹⁰ D1.

¹¹ Mr. Conant is a special education teacher. He has worked in the District for nine years, eight of those as a special education teacher at Franklin Pierce, and is the current co-head of the special education department. Mr. Conant has a teaching certificate with endorsements in special education and history. He participates in ongoing student teacher professional development and training, including training specific to special education teachers. Mr. Conant also teaches professional development classes for teachers who are interested in co-teaching in a classroom with both general education and special education students. *Id.* Mr. Conant estimates he has worked with approximately 800 students with IEPs. Tr. pp.389-392 (Conant); P50 at 16.

education teacher; Jamie Saunders, school psychologist; John Sander,¹² Assistant Superintendent of Teaching and Learning Services; Nick Watkins, General Education Teacher; Violet Hill, General Education Teacher; the Parent; Letysa Plaskett Rosario, School Counselor; Jeremy Pearce, General Education Teacher; and Brixey Marzano, Principal of Franklin Pierce.¹³

5. The February 2022 reevaluation noted that in April 2017, prior to her eligibility for special education services, the Student was assessed using both the Woodcock-Johnson IV Test of Cognitive Abilities (WJ IV COG) and the Woodcock-Johnson IV Test of Achievement (WJ IV ACH).¹⁴ On the WJ IV COG, the Student received a General Intellectual Ability (GIA) score of 81/Low Average, Oral Vocabulary score of 102/Average, and Phonological Processing score of 56/Very Low.¹⁵ On the WJ IV ACH, the Student received a Basic Reading Skills Composite score of 70/Low, a Broad Math Composite score of 93/Average, and a Written Expression Composite of 89/Low Average.¹⁶

6. The February 2022 IEP reevaluation reflected that on January 7, 2022, the school psychologist assessed the Student using the Kaufman Test of Educational Achievement, Third Edition (KTEA-III).¹⁷ On the KTEA-III, the Student received a Reading Score of 80/9th Percentile (Below Average), with sub scores in Letter and Word Recognition of 71/3rd Percentile (Below Average), and Reading Comprehension of 91/27th percentile (Average).¹⁸ The Student received a Reading Fluency score of 65/1st Percentile (Low), with sub scores in Silent Reading Fluency of 75/5th Percentile (Below Average), Word Recognition Fluency of 64/1st Percentile (Low), and Decoding Fluency of 64/1st Percentile (Low).¹⁹ The Student also received a Math score of 80/9th Percentile (Below Average), with sub scores of Math Concepts and Applications of 86/18th Percentile (Average), Math Computation of 76/5th Percentile (Below Average), and Written Expression 97/42nd Percentile (Average).²⁰

¹² Mr. Sander has served as the District's Assistant Superintendent of Teaching and Learning Services for seven years. He holds an Education Specialist degree in school psychology, a Washington State certification as a school principal, and Washington State certification with a superintendent credential. In his 25 years in education, Mr. Sander has served as school psychologist; elementary school principal; and a central office administrator with roles ranging from director of assessment of federal programs, assistant superintendent overseeing human resources, maintenance of facilities, special services, and teaching and learning. Tr. pp.43-45 (Sander).

¹³ D1 at 5.

¹⁴ D1 at 1-2.

¹⁵ D1 at 1.

¹⁶ D1 at 1-2.

¹⁷ D1 at 9.

¹⁸ Id.

¹⁹ Id.

²⁰ Id.

7. Current academic testing was unavailable in February 2022, but the Student was recently re-evaluated in May 2020, prior to the Covid pandemic in May 2020.²¹ The reevaluation also contained teacher reports as of January 26, 2022.²² At that time, the Student was enrolled in Beginning Guitar, Advanced Culinary Arts, Geometry, Physical Science, Sophomore English, World History, and Spanish 3.²³

8. The reevaluation summary noted that Mr. Conant, the Student's special education teacher, who co-taught Sophomore English with a general education teacher, reported that the Student could sometimes be easily distracted by friends, but that she was performing as well as her other classmates and that he was very proud of her progress.²⁴ Mr. Conant further reported that the Student benefitted from chunking assignments and directions, positive reinforcement, and extra time.²⁵

9. The reevaluation summary noted that Bryan Zagar,²⁶ the Student's general education World History teacher, reported he had no concerns with the Student's progress in his class, and benefitted from the accommodations of regular check ins and breaking work into chunks.²⁷

10. The reevaluation summary noted that Dugan Shirer, the Student's Advanced Culinary Arts teacher, reported that the Student was always willing to participate, had no missing work, and benefitted from extra time to turn in work and check ins.²⁸

11. The reevaluation summary noted that Jeremy Pearce, the Student's general education Geometry teacher, reported that the Student struggled with completing all work, and could benefit from shortened assignments, as the work she completed demonstrated understanding and she received passing grades.²⁹ Mr. Pearce further

²¹ D1 at 1-2.

²² D1 at 7.

²³ Id.

²⁴ Id.; Tr. pp.401-403 (Conant).

²⁵ Id.

²⁶ Mr. Zagar has worked as a general education teacher in the District for 27 years, 18 years of that at Franklin Pierce. He attended Pacific Lutheran University, obtained an undergraduate degree in elementary education, and received a teacher's certification. He is not certified in special education and does not have a background in reading literacy. Mr. Zagar has also worked at the Association of Washinton Student Leaders (AWSL), working in student leadership summer camps since 2001. He participates in ongoing student teacher professional development and training. Mr. Zagar works with 10-20 students per year with IEPs, and estimates at least a quarter of those students each year have reading difficulties. Tr. pp.572-575 (Zagar); P50 at 4.

²⁷ D1 at 7; Tr. pp.575-579 (Zagar).

²⁸ D1 at 7.

²⁹ Id.

reported that the Student benefited from extra time, shortened assignments, use of a calculator, and verbal assessments.³⁰

12. The February 2022 reevaluation did not contain any executive functioning testing.³¹ Teacher reports did not indicate any the Student experienced any specific social/emotional/study skills or executive functioning difficulties.³²

13. The February 2022 reevaluation indicated that based on the Student's General Intelligence Assessment (GIA) score of 81, and an achievement score at or below 70 (phonological processing at 56/Very Low), the Student met criteria as a student with SDL in basic reading, and required SDI in basic reading.³³ The reevaluation further noted that after considering the Student's scores in reading fluency, decoding, and phonological processing, the Student "appears to have challenges related to Dyslexia within the educational setting."³⁴ The reevaluation concluded that the Student's testing results showed that reading fluency and decoding were an area of particular weakness, and that SDI was recommended in basic reading skills to address these needs.³⁵

14. The February 2022 reevaluation additionally noted that the Student's testing in math reflected she was performing in the average range, and although reading word problems aloud was difficult, the work she was producing in class was meeting standard.³⁶ Therefore, the IEP team decided it would be best to support her math skills with accommodations or modifications, such as use of a calculator, verbal assessment, and shortened or modified work, rather than SDI.³⁷

15. The Student's IEP Team held an IEP meeting on February 1, 2022.³⁸ The Student's IEP team included most of the participants in the reevaluation meeting, the Student and the Parent.³⁹ Neither Mr. Saunders, the school psychologist, nor Letysa Plaskett Rosario, School Counselor, attended the IEP meeting.⁴⁰

³⁰ D1 at 7.

³¹ D1.

³² D1 at 11-12

³³ D1 at 2, 4.

³⁴ D1 at 2, 9.

³⁵ D1 at 2.

³⁶ D1 at 9.

³⁷ Id.

³⁸ D2; D18.

³⁹ D2 at 1.

⁴⁰ Id.

16. During the February 1, 2022 IEP meeting, the Parent expressed concern that the Student had dyslexia, and that she was not reading at grade level.⁴¹ The Parent had conducted an on-line test in January 2022, which indicated the Student had dyslexia and was reading at a fourth grade level.⁴²

17. The Parent suggested having the Student withdraw from high school and enroll in a general educational development (GED) program, but also expressed interest in the Student enrolling in a culinary arts program at the Pierce County Skills Center (PCSC) through the high school.⁴³ The Parent believed that a career path in culinary arts might be appropriate for the Student, as it did not require a lot of reading.⁴⁴ The Student also indicated that she was interested in pursuing culinary arts.⁴⁵

18. The IEP team did not believe that a GED program was rigorous enough for the Student.⁴⁶ Rather, the IEP team concluded that the Student's SDI needs could be met by focusing on the goal of basic reading, with reading fluency nested as a subset of the basic reading goal.⁴⁷

19. An IEP was developed for the Student in February 2022, for the period of February 11, 2022 through February 10, 2023 (February 2022 IEP).⁴⁸ The IEP contained a single goal in basic reading to develop the skill of fluency.⁴⁹ The IEP did not outline any decoding goals:⁵⁰

Annual Goal: Basic Reading

Supports the student's post secondary goals:

Yes ☒ No ☐

Skill: Fluency

By 02/10/2023, when given the task to read an unfamiliar instructional level literary or informational text for 1 minute [REDACTED] will read the text aloud improving her reading fluency from 79 WCPM (Words Correct per Minute) with an accuracy score of 85% to greater than 87 WCPM and with 95% accuracy using Goalbook fluency extract at grade level as measured by 3 consecutive Goalbook-modified Progress Monitoring Assessments.

How will progress toward this goal be reported?

X Written Progress Report Other

Report of Student Progress: Quarterly

⁴¹ D18 at 1.

⁴² Tr. p.1089 (Parent).

⁴³ D18 at 1; Tr. pp.53-54 (Sander).

⁴⁴ Tr. pp.50-51 (Sander); Tr. pp.1089-1090 (Parent).

⁴⁵ D18; D19.

⁴⁶ D18; Tr. pp.52-54 (Sander).

⁴⁷ D1; D2; Tr. pp.123-124 (Sander).

⁴⁸ D2.

⁴⁹ D2 at 5-6. WCPM means "Words Correct Per Minute." Tr. 761 (Dupuy).

⁵⁰ Compare, D1 at 2, 809; D2 at 5-6.

20. The special education and related services matrix provided the following SDI in the area of basic reading, to be provided by a special education teacher and monitored by a special education teacher, within the general education setting:⁵¹

Services 02/11/2022 - 02/10/2023							
Concurrent	Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)	Start Date	End Date
Special Education							
No	Basic Reading	Special Education Teacher	Special Education Teacher	200 Minutes / 1 Times Monthly	General Education	02/11/2022	02/10/2023
Total minutes per week student spends in school:				1800 minutes per week			
Total minutes per week student is served in a special education setting:				0 minutes per week			
Percent of time in general education setting:				100% in General Education Setting			

21. The February 2022 IEP contained twelve accommodations and a single modification.⁵²

22. The February 2022 IEP further reflected that the Student wanted to work in the field of culinary arts.⁵³ The IEP identified a Secondary Transitional plan for the Student to enroll in culinary arts classes while at high school, explore culinary arts classes in the community while in high school, and attend the culinary arts program at PCSC as transition to employment after graduation:⁵⁴

I. Post Secondary Goals/Outcomes

Define and project the desired post-secondary goal as identified by the student, parent, and IEP team in the available content areas. Transition Services may be special education, if provided as specifically designed instruction or related services. These services would be included in the Service Matrix section of the IEP.

Content Area: Education/Training	
Upon leaving public school () will attend a culinary arts program.	
Transition Services	Staff / Agency Responsible
education- () will take culinary arts as part of her classes at FP	General Education
community- () will explore culinary arts programs available in the community as post high school options for training	Career Counseling Center
Content Area: Employment	
Upon leaving public school () will find employment in the field of culinary arts.	
Transition Services	Staff / Agency Responsible
education- () will explore the possibility of attending Pierce county skill center culinary arts program to acquire skills and certificates towards employment in the field of culinary arts.	Pierce County Skills Center
community- () will attend virtual or in person job fairs to explore job opportunities in the field of culinary arts.	Career Counseling Center

23. A prior written notice (PWN) dated February 8, 2022, proposed to implement the IEP on February 11, 2022.⁵⁵ The Parent signed the PWN on February 8, 2022.⁵⁶

⁵¹ D2 at 13.

⁵² D2 at 10-11.

⁵³ D2 at 6.

⁵⁴ D2 at 7.

⁵⁵ D2 at 16-18.

⁵⁶ D2 at 18.

Spring 2022 – Student Progress and Academic Reports

24. In her Sophomore year, the Student took Sophomore English, co-taught with Mr. Conant, the Student's special education teacher, and general education teacher Violet Hill.⁵⁷ In this class, teachers first introduced vocabulary and talked about pronunciation of words, before going through a first read of the material with an audio so all students could follow along while reading.⁵⁸ The class annotated the material during a second read while reading specific paragraphs out loud.⁵⁹ Students then moved onto a writing prompt in a small group, and reread the text looking for evidence.⁶⁰

25. To support the Student's SDI in Sophomore English, Mr. Conant matched the Student with a reading partner to read to each other.⁶¹ He monitored and counted the Student's words per minute as part of her progress monitoring.⁶² Mr. Conant also incorporated organizational and planning elements into the class, including posting timelines on the whiteboard, posting an annotated calendar with processes and lesson plan steps, and referring to these items during class.⁶³ As compared to her general education peers, Mr. Conant observed that the student had no issues with organizing and planning.⁶⁴

26. Mr. Conant's IEP progress report for April 15, 2022, noted that the Student met her fluency goals, specifying "[u]sing a Goalbook fluency extract, the Student read 116 WCPM with 97% accuracy."⁶⁵ The progress report did not indicate the grade level text used, but Mr. Conant typically used a reading passage based off a student's grade from Goalbook, a program the District used to download grade-level reading passages.⁶⁶

27. Mr. Conant's IEP progress report for June 14, 2022, indicated that the Student was making progress toward her academic and IEP goals, but did not contain any specific measurements of progress on the goal of basic reading and fluency, or any updated fluency goals to increase the Student's skills in reading fluency.⁶⁷ Rather, the

⁵⁷ D17 at 1; Tr. pp.395-401 (Conant)

⁵⁸ Tr. pp.396-397, 478 (Conant).

⁵⁹ Id.

⁶⁰ Id.

⁶¹ Tr. pp.398-399 (Conant).

⁶² Id.

⁶³ Tr. p.403 (Conant).

⁶⁴ Id.

⁶⁵ D17 at 1; Tr. p.400 (Conant)

⁶⁶ Id.; Tr. p.459, 461-462 (Conant)

⁶⁷ Id.

progress report noted “[s]ometimes motivation is a struggle, but she seems highly capable of completing the work at a high rigor when she decides to do so.”⁶⁸

28. Mr. Zagar, the Student’s World History teacher, sometimes had a paraeducator in class.⁶⁹ He did not participate in providing SDI to the Student in Basic Reading.⁷⁰ Near the end of the year, Mr. Zagar noted that the Student was on the cusp of failing his class due to missing assignments, but that she ultimately earned a passing grade.⁷¹ Mr. Zagar believed that the Student made academic progress in the class as she became more independent, and that she left the class with an understanding of world history.⁷²

29. District Smarter Balanced Assessment (SBA) testing for spring 2022 reflected that the Student scored a 2541/Level 2 (nearly meeting high school expectations) in English Language Arts (ELA), and a 2481/Level 1 in Mathematics (does not meet high school expectations).⁷³

30. District transcripts reflect that after the February 2022 IEP was implemented, the Student passed all classes during second semester of her sophomore year, and received a B- in sophomore English 2, and a C in Geometry.⁷⁴

2022-2023 Academic Schedule

31. In March 2022, the Parent requested that the District cover the costs for a GED prep and assessment for the Student.⁷⁵ In a March 2022 PNW, the District refused to pay for these costs, but specified that the Student could pursue other educational options, including culinary education through the PCSC.⁷⁶ The Parent filed a due process request related to this PNW, but later withdrew their appeal.⁷⁷

32. In April 2022, Mr. Sander emailed the Parent and enquired whether the Parent were still looking into high school completion programs at Clover Park and Bates Tech, where the Student could receive a high school diploma rather than a GED.⁷⁸ Mr. Sander spoke to a high school social worker about whether either of the programs would

⁶⁸ Id.

⁶⁹ Tr. p.577 (Zagar).

⁷⁰ D17; Tr. pp.593-594 (Zagar).

⁷¹ Tr. p.587-590 (Zagar).

⁷² Tr. p.579 (Zagar).

⁷³ P9 at 5-6.

⁷⁴ D12.

⁷⁵ D20; Tr. pp.57-58, 60 (Sander).

⁷⁶ Id.

⁷⁷ Tr. pp.60-61 (Sander).

⁷⁸ P3; Tr. pp.109-111 (Sander).

support a student with disabilities, and informed the Parent that the culinary arts program at Clover Park Tech was reported to be very good at supporting students with disabilities and providing accommodations.⁷⁹

33. The Student did not withdraw from high school or enroll in a GED program.⁸⁰ Rather, the Student prospectively enrolled in math and history classes at Franklin Pierce for the 2022-2023 school year, as well as Franklin Pierce's Food Justice in Action (Food Justice) program taught off-campus, and Teaching Academy taught off-campus.⁸¹ The last two classes were based on the Student's transition plan of wanting to pursue culinary arts.⁸²

34. Food Justice is a multidisciplinary general education class taught by a general education teacher, Matt Price,⁸³ at the high school's off-campus farm.⁸⁴ Students receive credits in eleventh grade ELA based on reading, essays and written work, as well as credits in science, lab science, CTE and elective credits.⁸⁵ Teaching Academy is also general education class taught by a general education teacher.⁸⁶ During first semester students learn how to be teachers, and during second semester students work as volunteer paraeducators in elementary schools.⁸⁷

35. Franklin Pierce operates on a schedule consisting of alternating "A" and "B" days during which students take half their classes, and which rotate on a weekly basis (A-B-A-B-A, B-A-B-A-B).⁸⁸ The 2022-2023 academic calendar ran from August 30, 2022 through June 22, 2023, with first semester ending on January 25, 2023.⁸⁹ The Student's academic schedule for the 2022-2023 school year included the following classes:⁹⁰

First Semester

Financial Literacy
Teaching Academy
Algebra II

Second Semester

Advisory/Connections
Financial Literacy
Algebra II

⁷⁹ P3; Tr. pp.110-111 (Sander).

⁸⁰ D12.

⁸¹ P4; P49; Tr. pp.73-75 (Sander); Tr. pp.175-176, 192 (Price).

⁸² Tr. pp.74-75 (Sander).

⁸³ Mr. Price is a CTE Environmental Science Educator at Washington High School. He received a bachelor's degree at the University of Puget Sound, and has a degree in International Political Economy and Music. Mr. Price is certificated by the State of Washington as a teacher, and has worked as a teacher for ten years. While employed with the District, he continuously attended professional development classes. Tr. pp.172-174 (Price).

⁸⁴ P4; P49; Tr. p.176 (Price).

⁸⁵ Id.

⁸⁶ Tr. pp.580, 594 (Zagar).

⁸⁷ Tr. p.580 (Zagar).

⁸⁸ Tr. p.49 (Sander); Tr. p.454 (Conant).

⁸⁹ D47.

⁹⁰ D12.

36. On August 12, 2022, Mr. Conant expressed in an email to Ms. Marzano, the assistant principal, that he had concerns about the Student being placed in a general education ELA class.⁹¹ Mr. Conant was specifically concerned that the Student was placed in an unsupported general education class.⁹²

37. On September 14, 2022, the Student's special education teacher for the 2022-2023 school year, Ms. Sulkosky, emailed Mr. Price,⁹³ the Student's Food Justice teacher.⁹⁴ Ms. Sulkosky stated that she believed the Student was properly placed in the Food Justice class, but that she needed to talk to him about supporting the Student.⁹⁵ Mr. Price responded that the Student was doing a "great job" in the class, and that he had spoken with the Student about doing more 1:1 verbal answering of questions, rather than producing long-form written answers.⁹⁶

August 2022 IEE Request

38. On August 18, 2022, the Parent requested that the District fund an IEE.⁹⁷ Mr. Sander approved the IEE request on August 23, 2022.⁹⁸

39. On September 29, 2022, the Parent informed Mr. Sander that she had chosen Dr. Cindy Dupuy, Ph.D.,⁹⁹ to conduct the IEE.¹⁰⁰ On December 15, 2022, the District entered into a contract with Dr. Dupuy.¹⁰¹

February 2023 IEP

40. On October 12, 2022, the Student asked her counselor at Franklin Pierce if PCSS had any pre-veterinary tech (vet tech) classes for the 2023-2024 school year, and the counselor confirmed that such a program existed at PCSC.¹⁰²

⁹¹ P5 at 1; Tr. p.427-438 (Conant).

⁹² P5 at 1; Tr. p.427-438 (Conant).

⁹³ P6; Tr. pp.172-174 (Price).

⁹⁴ P6; Tr. pp.206- 207 (Price).

⁹⁵ P6; Tr. pp.206- 207 (Price).

⁹⁶ P6; Tr. pp.206- 207, 209 (Price).

⁹⁷ D3.

⁹⁸ D4; D22 at 4; Tr. pp.63-64 (Sander).

⁹⁹ Dr. Dupuy holds a BS in Chemistry from the University of California, a master's degree in secondary education from Western Washington University, and a Ph.D. in learning disabilities from Northwestern University. P86; Tr. pp.648-650 (Dupuy); Tr. p.992 (Dupuy).

¹⁰⁰ D22 at 4; Tr. pp.63-64 (Sander).

¹⁰¹ D23; Tr. p.66 (Sander).

¹⁰² D21.

41. On January 25, 2024, Ms. Sulkosky e-mailed the Parent about the upcoming IEP meeting, and informed them that if the Student was still interested in the culinary arts program at PCSC, registration for the following year opened on February 23rd.¹⁰³ The Parent responded that they would have to talk to the Student, as she was also looking into the PCSC vet tech program.¹⁰⁴

42. On February 1, 2023, the Student's IEP team met for an IEP.¹⁰⁵ The Student's IEP team consisted of the Parent, the Student, Ms. Sulkosky, Mr. Sander, Mr. Price, Mr. Zagar, Ronald W. Hartley, Principal of Franklin Pierce, Ryan Ford, attorney for the Parent, and Sam Chalfant, attorney for the District.¹⁰⁶

43. The IEP team noted that the Student was meeting classroom standards in her classes that called for basic reading skills, such as Food Justice in Action, Teaching Academy, and US History.¹⁰⁷

44. An IEP progress report for November 16, 2022, indicated that the Student was "doing fairly well, participating in reading, writing, and outdoor activities."¹⁰⁸ The progress report did not contain any specific measurements of progress on the IEP goal of basic reading.¹⁰⁹

45. Mr. Price's teacher comments in the IEP review reflected that in the Food Justice class, the Student was "asking level 2 and 3 questions, and completing assignments in a timely manner."¹¹⁰ Additional comments noted "[Student] met the class standards using modifications and accommodations afforded her according to her IEP at a level 2 or above. Her same grade peers are expected to meet the same standards at a level 3 or above."¹¹¹ A "level 2" classroom assessment means that a Student is able to both understand a term and apply it in context, and a "level 3" classroom assessment means that a Student can apply the term in another context.¹¹²

46. Mr. Zagar taught the Student's Teaching Academy class, a general education class.¹¹³ Mr. Zagar's progress notes for first semester indicated that she was engaged

¹⁰³ D24 at 1.

¹⁰⁴ Id.

¹⁰⁵ D5.

¹⁰⁶ D5, p.1 ; Tr. pp.75, 187 (Price); Tr. pp.75-76 (Sander); Tr. , pp.583-584 (Zagar).

¹⁰⁷ D5 at 4.

¹⁰⁸ D17 at 1.

¹⁰⁹ Id.

¹¹⁰ D5 at 4; Tr. pp.182-183 (Price).

¹¹¹ D5 at 4-5; Tr. pp.182-183, 196-199 (Price).

¹¹² Tr. pp.182-183, 196-199 (Price).

¹¹³ Tr. p.577 (Zagar).

with her peers and the curriculum, and had read and presented in front of the class, met deadlines and turned in high quality work.¹¹⁴ Mr. Zagar had no involvement in providing SDI to the Student on her Basic Reading goals.¹¹⁵

47. Regarding the Student's American History class, comments from general education teacher Jeremy Coleman noted that the Student earned a B+ during the first semester, and that "[h]er academic skills were some of the best in my class."¹¹⁶

48. Comments from Brittany Hemicker, the Student's Algebra II teacher, reflected that the Student had had 19-20 missing assignments, sometimes struggled to stay on task, and was distracted by her phone.¹¹⁷ However, Ms. Hemicker further reported that overall, the Student had been successful during the semester.¹¹⁸

49. An IEP was developed for the Student for the period of February 6, 2023 through February 6, 2024 (February 2023 IEP).¹¹⁹ The February 2023 IEP again contained a single goal in basic reading.¹²⁰ However, the updated IEP goal focused on vocabulary and comprehension, and no longer included reading fluency.¹²¹ The IEP goal did not explain why neither decoding nor reading fluency were included, despite the fact that the February 2022 IEP reevaluation indicated the Student had difficulty in both reading fluency and decoding, and that SDI was recommended in basic reading skills to address these needs.¹²² The IEP goal also did not reference any grade level standard:¹²³

Annual Goal: Basic Reading

Supports the student's post secondary goals:

Yes ☒ No ☐

By 02/05/2024, when given a classroom assignment [REDACTED] will meet standard. Improving basic reading skills in the areas of vocabulary and comprehension from a standard score of 2 or above to a standard score of 2.5 or above as measured by grades posted in Teacher Ease by teachers in her General Education classes that measure literacy skills.

How will progress toward this goal be reported?

X Written Progress Report Other

Report of Student Progress: Quarterly

¹¹⁴ D5 at 4.

¹¹⁵ Tr. p.592-594 (Zagar).

¹¹⁶ D5 at 4.

¹¹⁷ D5 at 3-4.

¹¹⁸ D5 at 4.

¹¹⁹ D5.

¹²⁰ D5 at 5.

¹²¹ Id.

¹²² Compare, D1 at 2; D5 at 5.

¹²³ D5 at 5.

50. Mr. Sander attended the February 2023 IEP team meeting.¹²⁴ Mr. Sander acknowledged that basic reading, reading fluency, and reading comprehension are separate areas under which a student can qualify for SDI in reading.¹²⁵ Mr. Sander did not recall whether, in developing the Student's February 2023 IEP, the Student's IEP team specifically discussed allocation of SDI for reading fluency.¹²⁶

51. The special education and related services matrix in the February 2023 IEP provided the following SDI in the area of basic reading, to be provided by a special education teacher and monitored by a special education teacher, within the general education setting:¹²⁷

Services 02/06/2023 - 02/05/2024							
Concurrent	Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)	Start Date	End Date
Special Education							
No	Basic Reading	General Education Teacher	Special Education Teacher	200 Minutes / 1 Times Monthly	General Education	02/06/2023	02/05/2024
Total minutes per week of building instructional time available for this student (excluding lunch):				1800 minutes per week			
Total minutes per week student is served in a special education setting:				0 minutes per week			
Percent of time in general education setting:				100% in General Education Setting			
Description of Services:							
[REDACTED] will receive specially designed instruction in basic reading through her general education classes-Food Justice in Action, US History, Algebra II, Financial Literacy, and Teaching Academy. Specially designed instruction will look like using the general education curriculum and modifying it and providing accommodations to meet [REDACTED] needs and instructional levels so that she can be successful in the classroom. Success will be determined by [REDACTED] meeting class standards (based on modified standards) at a level equal to that of her peers.							

52. The February 2023 IEP again contained the twelve accommodations and a single modification.¹²⁸

53. The February 2023 IEP continued to reflect that the Student wanted to work in the field of culinary arts.¹²⁹ The IEP contained comments from a January 2023 Student Transition Survey and Interview, that the Student "needs time and resources to compare the possibility of becoming a vet tech against a career in culinary arts as her interests evolve through her high school career."¹³⁰ The Student Transition Survey and Interview identified the Student's strengths to include baking and "tweaking recipes," and that her preferences included working indoors baking.¹³¹ The IEP identified a Secondary Transitional plan for the Student to enroll culinary arts classes while at high

¹²⁴ Tr. p.77 (Sander).

¹²⁵ Tr. p.114 (Sander)

¹²⁶ D5; Tr. pp.115 (Sander).

¹²⁷ D5 at 13.

¹²⁸ D5 at 10-11.

¹²⁹ D5 at 5-7.

¹³⁰ D5 at 5.

¹³¹ D5 at 5.

school, explore culinary arts classes in the community while in high school, and attend the culinary arts program at PCSC as transition to employment after graduation:¹³²

I. Post Secondary Goals/Outcomes

Define and project the desired post-secondary goal as identified by the student, parent, and IEP team in the available content areas. Transition Services may be special education, if provided as specifically designed instruction or related services. These services would be included in the Service Matrix section of the IEP.

Content Area: Education/Training	
Upon leaving public school () will () will attend a culinary arts program.	
Transition Services	Staff / Agency Responsible
education- () will take culinary arts as part of her classes at FP	General Education
community- () will explore culinary arts programs available in the community as post high school options for training	Career Counseling Center

Content Area: Employment	
Upon leaving public school () will () will find employment in the field of culinary arts.	
Transition Services	Staff / Agency Responsible
education- () will explore the possibility of attending Pierce county skill center culinary arts program to acquire skills and certificates towards employment in the field of culinary arts.	Pierce County Skills Center
community () will attend virtual or in person job fairs to explore job opportunities in the field of culinary arts.	Career Counseling Center

54. A prior written notice (PWN) dated February 1, 2023, proposed to implement the IEP on February 6, 2023.¹³³

55. The Parent did not request any changes in the Student's goals or SDI, or express any concerns about the Student's SDI as outlined in the February 2023 IEP.¹³⁴ The Student's special education teacher, Ms. Sulkosky, also expressed at the IEP meeting that the family was setting low expectations for the Student, and that the Student was more capable than they believed.¹³⁵

56. The Parent believed she may have discussed the Student's writing skills during the February 2023 IEP meeting, but could not recall any specific details of this discussion.¹³⁶ The Parent spoke to Mr. Price during an advisory session about the Student's writing in the Food Justice class, and recalled that Mr. Price responded that the Student did not seem to have any problems with her writing.¹³⁷

57. On February 2, 2023, the Franklin Pierce principal, Ronald W. Hartley emailed the IEP team participants notes about the meeting.¹³⁸ These notes reflected that the Parent expressed concern that the Student was not reading at grade level, despite her

¹³² D5 at 7.

¹³³ D5 at 16.

¹³⁴ Tr. p.77 (Sander).

¹³⁵ Tr. pp.77-78 (Sander).

¹³⁶ Tr. p.1096 (Parent); D5.

¹³⁷ Tr. Day 5, p.1097 (Parent).

¹³⁸ P11; Tr. p.76 (Sander).

grades, and concerns that the Student was being pushed through in Algebra despite missing 19-20 assignments.¹³⁹

58. On February 2, 2023, the Student completed a national online career interest profiler which indicated that her interest clusters were vet tech and writer.¹⁴⁰

Spring 2023 – Student Progress and Academic Reports

59. As of April 2023, the Student had been diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) and prescribed ADHD medication.¹⁴¹ However, none of the IEP progress notes indicated that teachers were aware of the diagnosis, or aware that the Student was taking medication.¹⁴²

60. Mr. Price, a general education teacher, taught the Student's general education Food Justice class during her Junior year.¹⁴³ Reading instruction in the class included reading the primary text, *Braiding Sweetgrass*, a book appropriate to eleventh and twelfth grade text.¹⁴⁴ Mr. Price supplemented this reading with 30-40 academic research and news articles, and also required students to complete projects and writing assignments.¹⁴⁵

61. Mr. Price is not a reading specialist, does not have expertise in reading decoding or reading fluency.¹⁴⁶ To meet the Student's SDI needs in "basic reading," Mr. Price scaffolded additional supports around the general education instruction, including creating word banks, chunking out or dividing assignments into smaller sections, reading material aloud, and sectioning out smaller sections of text to read.¹⁴⁷ Mr. Price emphasized that while he modified assignments for the Student, he did not modify his grading rubric.¹⁴⁸

62. The Student read the primary class text, and could also chose to listen to an audio version for certain sections of the text.¹⁴⁹ The Student also read text out loud and in small groups.¹⁵⁰ A couple of times, Mr. Price read the text back and forth with

¹³⁹ P11; D5 at 3-4.

¹⁴⁰ D25.

¹⁴¹ D38; Tr. p.1174 (Parent).

¹⁴² D17 at 2.

¹⁴³ Tr. pp.173-176 (Price)

¹⁴⁴ D5 at 4; Tr. pp.175-176, 177, 194 (Price).

¹⁴⁵ D5 at 4; Tr. p.177 (Price).

¹⁴⁶ Tr. pp.189-190 (Price).

¹⁴⁷ D5 at 11; Tr. pp.179-180, 191 (Price).

¹⁴⁸ Tr. pp.197, 200-202 (Price).

¹⁴⁹ Tr. pp.177, 179, 193-195 (Price).

¹⁵⁰ Tr. pp.179-180 (Price).

the Student.¹⁵¹ The Student independently read the text with audio approximately 50% of the time, read out loud or in small groups about 25% of the time, and independently read the text approximately 25% of the time.¹⁵² There is no indication that Mr. Price's provision of SDI to the Student was monitored by a special education teacher.¹⁵³

63. Mr. Price did not grade reading or reading fluency in his Food Justice class, but instead based grades on class projects including writing assignments.¹⁵⁴ While Mr. Price observed that *Braiding Sweetgrass* was the Student's most challenging text, he observed that the Student comprehended the text on the same level or above her general education peers, was in the top five students in his class to complete classroom reading assignments, and would often be reading a fictional novel on her own.¹⁵⁵

64. The Student's IEP progress report for April 19, 2023, noted that the Student was "scoring a 2.5 or above on her literacy skills standards in history, teaching academy, and food justice."¹⁵⁶

65. An IEP progress report for June 12, 2023, indicated that the Student was "earning a score between 2.0 and 3.0 on her literacy skills standards in history, teaching academy and food justice."¹⁵⁷

66. Mr. Price noted in June 2023 that the Student was "earning a score between 2.0 and 3.0 on her literacy skills standards" in food justice, meaning the Student was at or above her general education peers.¹⁵⁸ Mr. Price did not observe the Student exhibit any executive function deficits in his class, noting that she would bring in overdue assignments the following day.¹⁵⁹

67. Regarding the Student's second semester Algebra II class, a May 25, 2023, email from the Student's Algebra II teacher, Ms. Hemicker, to the Parent reflects that the Student had recently been on her phone during class rather than working on assignments, and had not done well on her last test.¹⁶⁰ Ms. Hemicker further reported

¹⁵¹ Tr. pp.180-181, 194-195 (Price).

¹⁵² Tr. pp.193-194, 196 (Price).

¹⁵³ Tr. pp.173-205 (Price).

¹⁵⁴ Tr. pp.203-205 (Price).

¹⁵⁵ Tr. p.181 (Price).

¹⁵⁶ D17 at 2; Tr. pp.184-185, 199-200 (Price).

¹⁵⁷ D17 at 2.

¹⁵⁸ Tr. pp.182-183, 196-199 (Price).

¹⁵⁹ Tr. pp.185-186 (Price).

¹⁶⁰ P16.

that the Student had “done well throughout the semester, and I would hate to see her sink now.”¹⁶¹

68. Mr. Zagar taught the Student’s Teaching Academy class.¹⁶² Mr. Zagar provided the Student with supports and accommodations for her reading, including prereading strategies such as highlighting certain vocabulary words, but did not grade her reading or her writing skills.¹⁶³ Mr. Zagar expressed that the Student performed adequately during the first semester in Teaching Academy and, although she was initially nervous, did a “fine job” during the second semester working with kids in the elementary classroom.¹⁶⁴ Mr. Zagar expressed that he saw huge growth in the Student during her years in his classrooms, and that by the time she finished her Junior year, he was “super proud” of her.¹⁶⁵

69. Anita Blaisdell taught the Student’s Teaching Academy classroom practicum during second semester of the 2022-2023 school year, when the Student volunteered in a kindergarten classroom.¹⁶⁶ Ms. Blaisdell’s student evaluation noted that on a grading scale of 2-4, the Student received a score of 4 in all graded areas of preparation and knowledge, classroom environment, instruction, and professionalism.¹⁶⁷ A score of 4 “signifies exemplary skills or even mastery in an area, in other words that the student models the behavior of a professional paraeducator.”¹⁶⁸ The evaluation did not address the Student’s reading skills, but did note: “[Student] is so organized and helps me with classroom organization without prompting and I am so grateful. On the rare occasion that [Student] has had to miss class, she has emailed me with notice.”¹⁶⁹

70. District testing for spring 2023 reflected that the Student scored a 2516/Level 2 (nearly meeting grade level expectations) on her ELA test.¹⁷⁰

71. District transcripts reflect that during the 2022-2023 school year, the Student failed Algebra II 2 during second semester, but passed all other classes, including

¹⁶¹ Id.

¹⁶² Tr. pp.591-593 (Zagar).

¹⁶³ Tr. pp.590-593 (Zagar).

¹⁶⁴ Tr. p.581 (Zagar).

¹⁶⁵ Tr. pp.584 (Zagar).

¹⁶⁶ D30; Tr. p.581-582 (Zagar).

¹⁶⁷ D30.

¹⁶⁸ Id.

¹⁶⁹ D30.

¹⁷⁰ Compare, P9 at 1, at 5.

earning a B in both semesters in Food Justice, a C+ Teaching Academy 1, and C in Teaching Academy 2.¹⁷¹

May 2023 Executive Function Report and ADHD Diagnosis

72. On May 2, 2023, Mr. Sander received Dr. Dupuy's Executive Function report for the Student, which was completed before Dr. Dupuy started her full IEE.¹⁷² Mr. Sander viewed the Executive Function report as a preliminary report, with Dr. Dupuy's full IEE to arrive later.¹⁷³ Mr. Sander did not share the evaluation with the school psychologist, Brook Ducheneaux (née Ulmer),¹⁷⁴ or the Student's IEP team.¹⁷⁵

73. Dr. Dupuy's Executive Function report reflected that she met with the Student on February 14, 2023 and March 1, 2023, and administered multiple tests to assess her executive functioning.¹⁷⁶ Dr. Dupuy also considered the results of executive functioning rating scales completed by the Student, the Parent, and her teachers.¹⁷⁷ The rating scales completed by the Student and her Parent reflected that she suffered from inattention and executive dysfunction, however rating scales completed by the Student's teachers did not indicate that the Student had any executive functioning problems at school.¹⁷⁸ Dr. Dupuy had suggested that a drug trial might help clarify if the Student suffered from ADHD.¹⁷⁹

July 2023 IEE

74. Dr. Dupuy completed her IEE on July 21, 2023, and Mr. Sander received the IEE that same day.¹⁸⁰ The IEE indicated that the Student was diagnosed with ADHD and took stimulant medication throughout testing.¹⁸¹ Prior to completing any cognitive or

¹⁷¹ D12.

¹⁷² D27 at 1; Tr. pp.115-116 (Sander).

¹⁷³ D27; Tr. pp.117 (Sander)

¹⁷⁴ Brooke Ducheneaux (né Ulmer), is the school psychologist at Franklin Pierce. She has held that role for two years. She graduated from Pierce College with an associate's degree, University of Washington Tacoma with a bachelor's degree in psychology, and an education specialist degree from Seattle University, which is similar to a master's degree plus an additional forty-five credits. Ms. Ducheneaux is national certified as a school psychologist. She also previously held a part-time position as a tutor for Fife school district. Tr. pp.599-602 (Ducheneaux).

¹⁷⁵ D27; Tr. pp.116-117 (Sander); Tr. p.623-624 (Ducheneaux).

¹⁷⁶ Dr. Dupuy administered the Cognitive Assessment System - 2nd Edition (CAS2); Test of Verbal Conceptualization and Fluency (TVCF); Woodcock Johnson Tests of Cognitive Abilities - 4th Edition (WJ IV); Oral and Written Language Scales - Second Edition (OWLS-II); and Peabody Picture Vocabulary Test - 5th Edition (PPVT-5). D27.

¹⁷⁷ Dr. Dupuy administered the CRS-R Self Rating Scale - 4th Edition, CRS-R Teacher Rating Scale - 4th Edition, and CRS-R Parent Rating Scale - 4th Edition. D27.

¹⁷⁸ D27 at 4-8; Tr. pp.971-972 (Dupuy).

¹⁷⁹ D27 at 13.

¹⁸⁰ P15; D6; Tr. pp.154-155 (Sander).

¹⁸¹ Compare, D27 and D6 at 1, 3, 4, 12, 14, 16.

academic testing, while the Student was taking stimulant medication, Dr. Dupuy administered a test which measures inattentiveness, impulsivity, sustained attention and vigilance.¹⁸² Dr. Dupuy noted in the IEE that “the results do not suggest [Student] has a disorder characterized by attention deficits, such as ADHD.”¹⁸³

75. The July 2023 IEE reflected that Dr. Dupuy assessed the Student over four sessions between June 6, 2023 and June 26, 2023 – two in person and two by Zoom video conference.¹⁸⁴ The first video conference was conducted on June 8, 2023.¹⁸⁵ The second videoconference occurred on June 26, 2023, when Dr. Dupuy realized that the Student had not completed three final reading passages and had the Student complete them via a 15-minute video conference.¹⁸⁶

76. Dr. Dupuy’s July 2023 IEE contained results from the following select test batteries and subtests:¹⁸⁷

- Wechsler Adult Intelligence Scale - 4th Ed. (WAIS IV)
- Wide Range Assessment of Memory & Learning - 3rd Edition (WRAML-3)
- Kaufman Test of Educational Achievement - 3rd Ed. - Form B (KTEA-3, Form B)
- Comprehensive Test of Phonological Processing - 2nd Edition (CTOPP-2)
- Woodcock Johnson Tests of Cognitive Abilities - 4th Edition (WJ IV)
- Beery-Buktenica Developmental Test of Visual-Motor Integration - 6th Edition (Beery VMI-6)
- Jordan Left-Right Reversal Test - 3rd Edition (Jordan-3)
- Oral Passage Understanding Scale (OPUS)
- Gray Oral Reading Tests - 5th Edition, Form B (GORT-5, Form B)
- Woodcock Johnson Tests of Achievement - 4th Edition (WJ IV)
- Oral and Written Language Scales - Second Edition (OWLS II)
- Conners Continuous Performance Task 3 (CPT-3)

77. On the WAIS IV, the Student received a General Ability score of Average (103/58th percentile), and Full Scale IQ (Intelligence quotient) score of Average (94/34th percentile).¹⁸⁸

¹⁸² Dr. Dupuy administered the Conners Continuous Performance Task 3 (CPT-3). D6 at 4; Tr. pp.971-972 (Dupuy).

¹⁸³ Id.

¹⁸⁴ D6 at 3; D33; D34; Tr. pp.977-979 (Dupuy).

¹⁸⁵ D6 at 3-4; D34.

¹⁸⁶ D6 at 3-4; D33; Tr. p.979 (Dupuy).

¹⁸⁷ D6 at 1, 4-5.

¹⁸⁸ D6 at 5-6, 22.

78. The July 2023 IEE reflected the Student scored “Average” and “Low Average” in Rapid Autonomic Naming (RAM); “Average” and “Low Average” in Phonological Processing; “Borderline” and “Extremely Low” in Decoding (74/5th percentile, 72/3rd percentile and 54/0.1 percentile); “Extremely Low” in Oral Reading Fluency (3/1st percentile, 2/0.4 percentile, and 64/1st percentile); “Low Average” and “Extremely Low” in Silent Reading Fluency (85/16th percentile, 80/9th percentile); “Borderline” in Reading Comprehension (5/5th percentile and 72/3rd percentile); and “Borderline” in Reading Composite (65/1st percentile, 73/4th percentile, and 73/3rd percentile).¹⁸⁹

79. The July 2023 IEE further reflected the Student tested “Borderline” (75/5th percentile) in Spelling and Mechanics, and “Average” in Writing Fluency.¹⁹⁰ The Student also tested “Low Average” and “Extremely Low” (64/1st percentile) in Written Expression, and “Borderline” (78/7th percentile) in Writing Composite.¹⁹¹ Finally, the Student scored “Low Average” in all math measures except for “Borderline” (78/7th percentile) in Math Computation.¹⁹²

80. The July 2023 IEE noted the Student had multiple processing deficits in auditory short-term memory, phonological processing, visual motor integration, visual perception/orthographic processing, an ADHD diagnosis, and academic underachievement in reading, written language and math.¹⁹³ Dr. Dupuy diagnosed the Student with learning disabilities in reading (Reading Disorder), dyslexia (phonological and orthographic subtypes), written language (Disorder of Written Expression), dysgraphia, and math (Mathematics Disorder).¹⁹⁴

81. Dr. Dupuy outlined multiple recommendations for direct instruction related to the Student’s diagnoses of learning disabilities and ADHD.¹⁹⁵ The IEE included instructional recommendations for reading, reading fluency, reading comprehension, written language, math, studying techniques, orthographic processing, and executive functioning.¹⁹⁶

82. Specific to instruction in reading, fluency and comprehension, Dr. Dupuy recommended that the Student begin phonics-based and structured literacy instruction, and specifically suggested the programs Orton-Gillingham, Wilson Reading,

¹⁸⁹ D6 at 10-12, 16-17, 24-28.

¹⁹⁰ D6 at 18-19, 29.

¹⁹¹ Id.

¹⁹² D6 at 19-20, 29.

¹⁹³ D6 at 36-46; Tr. pp.684-.

¹⁹⁴ D32 at 30.

¹⁹⁵ D6 at 30-46.

¹⁹⁶ Id.

Slingerland, Lindamood-Bell, and Wired for Reading.¹⁹⁷ Dr. Dupuy also recommended reading and spelling instruction that focused on the history of English, explicit instruction in word morphology, direct instruction in oral reading expression, direct instruction in reading accuracy strategies, and reading comprehension techniques.¹⁹⁸ The IEE made no specific recommendations about the proposed minutes of SDI in reading.¹⁹⁹

83. Specific to writing instruction, among other recommendations, Dr. Dupuy suggested that the Student required explicit instruction in grammar and mechanics, and how to edit to find errors.²⁰⁰ She recommended the Student be taught basic formulas/structures for paragraphs, work on pre-writing activities such as generating word lists and creating an outline, receive instruction on producing and combining sentences, and spelling instruction within structured literacy instruction.²⁰¹ The IEE made no specific recommendations about the proposed minutes of SDI in writing instruction.²⁰²

84. Specific to math instruction, among other recommendations, Dr. Dupuy recommended the Student receive instruction in the base ten system, review fundamental principles in the area of math such as rational numbers, fractions, long division, and algebraic principles, and be taught a variety of techniques for reviewing calculations.²⁰³ The IEE made no specific recommendations about the proposed minutes of SDI in math instruction.²⁰⁴

85. Specific to executive functioning, among other recommendations, Dr. Dupuy recommended the Student receive model problem solving techniques from an adult, a variety of strategies for solving problems and how to apply them, and use “talk aloud” techniques to describe her thought process.²⁰⁵ The IEE made no specific recommendations about the proposed minutes of SDI in executive function instruction.²⁰⁶

86. In addition to instructional recommendations, Dr. Dupuy’s IEE proposed thirteen testing accommodations, forty-one classroom accommodations, seven

¹⁹⁷ D6 at 37.

¹⁹⁸ D6 at 37-38.

¹⁹⁹ D6 at 30-36, 41-42.

²⁰⁰ D6 at 39.

²⁰¹ Id.

²⁰² D6 at 39-40.

²⁰³ D6 at 40.

²⁰⁴ D6 at 39-40.

²⁰⁵ D6 at 41.

²⁰⁶ D6 at 41.

academic/curriculum accommodations, eight homework accommodations, and recommendations for assistive technology.²⁰⁷ These included most of the accommodations already outlined in the Student's February 2022 and February 2023 IEP.²⁰⁸

87. The IEE referenced teacher reports and classroom observations, but did not include any.²⁰⁹ The IEE did not discuss whether the Student experienced any academic or learning difficulties prior to 2017.²¹⁰ The IEE included grades and testing from the District's May 2020 evaluation, but did not include any grades or testing results after that date.²¹¹

2023-2024 Academic Schedule

88. In August 2023, Mr. Conant, the Student's special education teacher for the 2023-2024 school year, recommended that the Student enroll in Bridge to College English to ensure she received all necessary supports during her senior year.²¹² Bridge to College English is a class specifically designed for students who cannot pass the District SBA testing for ELA and have historically struggled in English.²¹³ The Student enrolled in Bridge to College English, and also enrolled in a vet tech program at PSCS.²¹⁴

89. The 2023-2024 school year began on August 29, 2023, and second semester began on January 29, 2024.²¹⁵ The Student last attended school on February 6, 2024.²¹⁶ The Student's academic schedule for fall 2023 consisted of the following classes:²¹⁷

First Semester

Pre-Veterinary Tech/PSCS (TC 10CC)/Pre-Veterinary Tech/PSCS (1SCI)
Bridge to College English Sr. I
Civics
Team Sports
Independent Study: WA State History

²⁰⁷ D6 at 30-36, 41-42.

²⁰⁸ Compare, D2 at 10-11 (February 2022 IEP); D5 at 10-11 (February 2023 IEP); D6 at 30-36, 41-42 (July 2023 IEE).

²⁰⁹ D6 at 3, 4, 16.

²¹⁰ D6 at 3.

²¹¹ Id.

²¹² P17; Tr. pp.429-430 (Conant).

²¹³ Tr. pp.1242-1243 (Fagan).

²¹⁴ D12; D21; D24; D25.

²¹⁵ D48; Tr. p.432-433 (Conant).

²¹⁶ Tr. pp.423-424 (Conant); Tr. pp.1150 (Parent).

²¹⁷ D12.

September 2023 IEE Meeting

90. Near the end of September 2023, the IEP team met to review the IEE.²¹⁸ Dr. Dupuy led the meeting, and it was attended by Ms. Ducheneaux, the Parent, Dr. Dupuy, Mr. Sander, Mr. Conant, and other IEP team members.²¹⁹ Mr. Conant recalled that Dr. Dupuy referred to the Student as “nearly illiterate” or “functionally illiterate,” but he disagreed with this assessment.²²⁰ Mr. Conant believed that the data presented in the IEE did not fit what he knew to be the Student’s levels of ability in reading.²²¹ Mr. Sander recalled that Dr. Dupuy opined that the Student had significant literacy needs and should be placed in the residency program at Gow in New York, where she could receive integrated and wraparound services in structured literacy.²²²

91. After the meeting, the IEP team decided to conduct an early reevaluation of the Student at the Parent’s request.²²³ Ms. Ducheneaux recalled that the reevaluation would include the areas of reading, writing and math, and that neither Dr. Dupuy nor the Parent requested that the reevaluation address executive functioning.²²⁴ In contrast, Dr. Dupuy recalled that while she suggested the Student not undergo any additional testing, she also suggested the District include some executive function rating scales within the reevaluation.²²⁵

September 2023 Parent Communications with Gow School

92. On September 29, 2023, on the advice of Dr. Dupuy, the Parent contacted Gow about the enrolling the Student for the 2023-2024 school year.²²⁶ Dr. Dupuy sent Gow the July 2023 IEE.²²⁷

93. On September 30, 2023, the Gow admissions office informed the Parent that the Student fit the learning profile of their students, and that the associate director of admissions could met the Parent at a school fair in Seattle later that week.²²⁸

²¹⁸ Tr. p.601 (Ducheneaux); D6; D36.

²¹⁹ D27; Tr. pp.116-117 (Sander); Tr. p.623-624 (Ducheneaux); Tr. p.409 (Conant).

²²⁰ Tr. p.409-410 (Conant); D6.

²²¹ Tr. p.409 (Conant).

²²² Tr. p.83-84 (Sander).

²²³ Tr. pp.603-604 (Ducheneaux); D7.

²²⁴ Id.

²²⁵ Tr. pp.959-960 (Dupuy).

²²⁶ D37; Tr. pp.1173-1174 (Parent).

²²⁷ D37 at 2.

²²⁸ D37 at 3.

94. Sometime in November 2023, the Parent and the Student traveled to New York to visit Gow.²²⁹ They were unable to visit the campus due to an unexpected campus lockdown, and instead met with Gow administrators by Zoom.²³⁰

2023-2024 Academic Progress

95. Mr. Fagan, a general education teacher, taught the Student's twelfth grade Bridge to College English class.²³¹ Students in the class completed both non-graded performative assignments to develop skills, and graded summative assignments.²³² A class unit on writing opinion articles also required students to research news or opinion articles on areas of interest, and provide a written essay summarizing the article.²³³

96. To support the Student's SDI in reading comprehension, Mr. Fagan consulted with Mr. Conant and checked in during weekly ELA meetings on Wednesdays.²³⁴ Mr. Conant also provided weekly check-ins with the Student, where he would help her break down the writing sample, work through her rough draft, and assist with punctuation, editing and paragraph structure.²³⁵ The Student was permitted to listen audio text of written material both in class and at home, including the reading book assignment of *The Great Gatsby*.²³⁶

97. Mr. Fagan recalled that during whole class readings the Student required more check-ins and prompting than the average student in class.²³⁷ Mr. Fagan observed the Student would engage with material that interested her, but would "shut down" if she became overwhelmed with tasks such as with annotating and summarizing text.²³⁸

98. During the class unit on opinion articles, Mr. Fagan observed that the Student had difficulty during the first read through summarizing each paragraph, noting unfamiliar words, looking up definitions, and taking notes in the margins.²³⁹ At the Student's request, Mr. Fagan assisted her in locating an article with a modified 6th to 8th grade reading level in an area of interest, specifically an article about zoos.²⁴⁰ Mr. Fagan explained that he selected the article based on the student's Lexile or reading

²²⁹ Tr. pp.1154, 1174-1179 (Parent).

²³⁰ Tr. pp.1174-1179 (Parent).

²³¹ D41 at 5-6; Tr. Day 6, p.1234 (Fagan).

²³² Tr. pp.1243-1244 (Fagan).

²³³ Tr. pp.1250-1252 (Fagan).

²³⁴ Tr. pp.1267-1268 (Fagan).

²³⁵ Tr. pp.1253-1254 (Fagan).

²³⁶ Tr. p.1245-1246 (Fagan).

²³⁷ Tr. pp.1247-1248 (Fagan).

²³⁸ Tr. pp.1248-1250 (Fagan).

²³⁹ Tr. pp.1250-1252 (Fagan).

²⁴⁰ Tr. pp.1237-1238, 1254-1255 (Fagan).

level.²⁴¹ The article Mr. Fagan selected for the Student to read was written by a sixth grade student.²⁴²

99. Mr. Fagan did not observe the Student exhibit executive functioning difficulties, noting that she would check-in before she left for the day to discuss the material, and always wanted to know how she could improve her grades.²⁴³

November 2023 Reevaluation

100. On October 3, 2023, Ms. Ducheneaux obtained the Parent's consent to conduct a reevaluation, focusing on review of existing data and the Student's academic, medical-physical and test records.²⁴⁴ The consent did not include reevaluation of the Student's social/emotional functioning, which would include executive functioning, and the Parent did not request any changes to the scope of the reevaluation.²⁴⁵ The Parent provided Ms. Ducheneaux with a release of information so she could obtain documentation from the Student's doctors.²⁴⁶

101. In completing the reevaluation, Dr. Ducheneaux reviewed the Student's grades and gathered teacher input.²⁴⁷ Ms. Ducheneaux also reviewed the testing from Dr. Dupuy contained in the IEE, as well as the Student's 2017 cognitive testing, 2017 social-emotional testing, and academic testing from 2017 and 2022.²⁴⁸ Ms. Ducheneaux did not conduct any additional testing, understanding that Dr. Dupuy had recommended the Student not undergo any more testing after her extensive IEE.²⁴⁹

102. Ms. Ducheneaux also reviewed medical records for the Student, including a medical progress note for June 21, 2023, which contained an ADHD diagnosis for the Student, and an updated progress note from July 17, 2023.²⁵⁰ The June 2023 progress note reflects that the Student was prescribed methylphenidate medication for ADHD, and that the Student reported no school performance issues, that she was well supported, and that the teachers were very involved, while the July 2023 progress note indicated that the Student reported attention difficulties in class.²⁵¹

²⁴¹ Tr. pp.1238-1239 (Fagan).

²⁴² Tr. pp.1237, 1255 (Fagan); P21.

²⁴³ Tr. pp.1252-1253 (Fagan).

²⁴⁴ Tr. pp.603-604 (Ducheneaux); D7.

²⁴⁵ Tr. pp.603-604, 612-616 (Ducheneaux); D7.

²⁴⁶ P84 at 2, ¶12; Tr. pp. 1101 (Parent).

²⁴⁷ Tr. p.607 (Ducheneaux); D8 at 8, 10-11.

²⁴⁸ D8 at 1-2.

²⁴⁹ Tr. p.604 (Ducheneaux).

²⁵⁰ Tr. pp.606-608 (Ducheneaux); D8 at 6; D32.

²⁵¹ D8 at 6; D32 at 1-2.

103. Ms. Ducheneaux's reevaluation included comments and input from various teachers.²⁵² The Student's advisory teacher noted that she had completed all the work required for graduation and had not needed support.²⁵³ The Student's Civics teacher indicated that the Student completed all her work, but sometimes hurried through work.²⁵⁴ Ms. Ducheneaux further noted that Dr. Dupuy's July 2023 IEE contained scoring on the CPT-3, which indicated that the Student was medicated at the time of the test and that the IEE noted that the Student's scores "do not suggest that [Student] has a disorder characterized by attention deficits, such as ADHD."²⁵⁵

104. Ms. Ducheneaux's reevaluation reflected that the Student's Bridge to College teacher, Mr. Fagan, reported that the Student was "rocking it" in class, and scored a "3" on all common core curriculum standards.²⁵⁶ He reported that the Student was motivated by her grades, had taken her book on a trip to New York, and did not want to fall behind.²⁵⁷ His November 3, 2023 IEP progress report did not contain any specific measurements of progress on the goal of basic reading.²⁵⁸

105. In the reevaluation, Mr. Fagan reported that the Student's strengths included perseverance and helping those around her while staying on track with her own assignments.²⁵⁹ He further reported that the Student struggled to read and comprehend at grade level, but accepted feedback from first drafts and utilized the accommodations of receiving notes ahead of time, one-on-one check ins, modified reading levels and text in audible format.²⁶⁰ The reevaluation noted that as of November 3, 2023, the Student was earning between a 2.5 (approaching standards) and a 3.5 (meeting standards) on her literacy skills across ELA and Social Studies.²⁶¹

106. The November 2023 reevaluation concluded that the Student continued to qualify for special education services as a student with an SLD, manifested by processing deficits in the areas of visual motor integration, visual perception/orthographic processing, and phonological processing, and that she significantly struggled with reading, writing, and math.²⁶² The reevaluation recommended SDI in the areas of basic reading, reading comprehension, and math

²⁵² D8 at 8, 10-11.

²⁵³ D8 at 8.

²⁵⁴ Id.

²⁵⁵ Tr. pp.639-640 (Ducheneaux); D6 at 4.

²⁵⁶ D17 at 2.

²⁵⁷ Id.

²⁵⁸ Id.

²⁵⁹ D8 at 10.

²⁶⁰ D8 at 10.

²⁶¹ D8 at 10-11.

²⁶² Tr. pp.633-632 (Ducheneaux); D8 at 3.

calculation.²⁶³ On November 11, 2023, Ms. Ducheneaux, Ms. Plaskett, Mr. Gandara, Mr. Sander, Mr. Conant, Mr. Fagan, Principal Jacki Washam, Ms. Dupuy, the Parent, and the Student met to discuss the reevaluation.²⁶⁴ Neither the Parent nor Dr. Dupuy signed the reevaluation.²⁶⁵

December 2023 Dissenting Opinion

107. On December 5, 2023, the District received Dr. Dupuy's dissenting opinion for the reevaluation.²⁶⁶ Comparing the Student's academic testing scores in 2017, 2022 and 2023, Dr. Dupuy commented that the Student "had not shown any significant academic progress."²⁶⁷ Dr. Dupuy included the following table to compare the Student's scores in decoding, sentence reading fluency, passage comprehension, written expression, math computations, and math applications:²⁶⁸

Area	Academic Subtest	2017	2022	2023*
Decoding	WJ Letter-Word Identification	66		
	KTEA 3 Letter & Word Recognition		71	
	KTEA 3 Letter & Word Recognition			75 [^]
Sentence Reading Fluency	WJ Sentence Reading Fluency	75		
	KTEA 3 Silent Reading Fluency		75	
	WJ Sentence Reading Fluency			80 [^]
Passage Comprehension	WJ Passage Comprehension	81		
	KTEA Reading Comprehension		91	
	KTEA Reading Comprehension			72
Written Expression	WJ Writing Samples	91		
	KTEA Written Expression		97	
	KTEA Written Expression			80
Math Computations	WJ Calculation	94		
	KTEA Math Computation		76	
	KTEA Math Computation			78 [^]
Math Applications	WJ Applied Problems	91		
	KTEA Math Concepts and Applications		86	
	KTEA Math Concepts and Applications			88 [^]

108. Dr. Dupuy further expressed concern that the District's reassessment failed to use rating scales to determine Student's executive functioning in the classroom, and did not address oral language.²⁶⁹ Dr. Dupuy recommended that the District consider

²⁶³ Id.

²⁶⁴ Tr. pp.604-606 (Ducheneaux); D8 at 5.

²⁶⁵ D8 at 5.

²⁶⁶ P25; D9.

²⁶⁷ D9 at 9, 12.

²⁶⁸ D9 at 9.

²⁶⁹ D9 at 2.

whether the Student should receive SDI in the area of executive functioning, and include oral language as an academic area for review.²⁷⁰

109. Ms. Ducheneaux reviewed Dr. Dupuy's December 2023 dissent, and added the Student's oral language and processing scores to the reevaluation.²⁷¹ Ms. Ducheneaux also amended the reevaluation to recommend that the Student receive additional services in written expression, in addition to math, basic reading and reading comprehension.²⁷²

110. Ms. Ducheneaux added the remaining concerns in Dr. Dupuy's December 2023 dissent to the reevaluation, including her concerns that the reevaluation omitted or incorrectly reported test scores, omitted state testing from a previous evaluation, incorrectly reported descriptive categories of assessment scores, and excluded justification for course enrollment.²⁷³ The reassessment also addressed Dr. Dupuy's other concerns, noting that the District determined the eligibility category of "SLD" was more indicative of the Student's challenges in the school setting than "Other Health Impairment" based on her ADHD diagnosis.²⁷⁴

111. The reevaluation noted Dr. Dupuy's concerns that executive functioning was not assessed within the academic category, clarifying that executive functioning is assessed within the social-emotional category.²⁷⁵ The PWN specified that the reevaluation rejected including SDI in the area of executive functioning, noting that teachers reported that the Student was not struggling with organization and planning and the Student was completed most of not all of her work.²⁷⁶

112. Dr. Ducheneaux finalized her reevaluation prior to a December 14, 2023 IEP meeting.²⁷⁷ Sometime after the District reevaluation, Ms. Ducheneaux received Dr. Dupuy's May 2023, Executive Function report for the Student.²⁷⁸ Had she received this report prior to her reevaluation, Ms. Ducheneaux would have considered evaluating the Student in executive functioning concerns.²⁷⁹ However, Ms. Ducheneaux noted that the report addressed a time period prior to the Student becoming medicated for

²⁷⁰ D9 at 12.

²⁷¹ Tr. pp. 612-618, 632-635 (Ducheneaux); D8 at 13-14, 19; D9 at 3; P27.

²⁷² Tr. pp.632-635 (Ducheneaux); D8 at 13.

²⁷³ Tr. pp. 612-616 (Ducheneaux); D8 at 19.

²⁷⁴ Tr. pp. 612-616 (Ducheneaux); D8 at 20; D9.

²⁷⁵ Tr. pp. 612-616 (Ducheneaux); D8 at 19.

²⁷⁶ Tr. pp. 612-616, 625-626, 631 (Ducheneaux); D8 at 20; D9.

²⁷⁷ Tr. pp.623-624 (Ducheneaux); D8; D9; D41.

²⁷⁸ Tr. pp.623-624 (Ducheneaux); D27.

²⁷⁹ Tr. pp.623-626, 633 (Ducheneaux); D27.

ADHD, while the Student's current executive functioning was reflected by teacher reports in November 2023.²⁸⁰

December 2023 Draft IEP²⁸¹

113. On December 12, 2023, the IEP team sent an IEP review meeting invitation to the Parent for December 14, 2023, and included a draft IEP (December 2023 draft IEP) for the period of December 19, 2023 through December 18, 2024.²⁸² The draft IEP specified that the Student qualified for SDI in Basic Reading, Reading Comprehension, Writing Expression, and Math Calculation.²⁸³ The draft IEP did not mention the Student's ADHD diagnosis, or any concerns about executive functioning, but included prior teacher input indicating that the Student had completed all required work for graduation in advisory and had not needed support, had completed all her work in Civics, and had helped those around her in Bridge to College English while staying on track with her own assignments.²⁸⁴

114. The draft IEP adopted the test scores from Dr. Dupuy's July 2023 IEE, noting that that the Student performed in the Below Average, Low and Very Low ranges in all tested areas.²⁸⁵ The draft IEP reflected that the Student "significantly struggles" in the areas of decoding, reading fluency, reading comprehension, spelling, and math calculation, that she "struggles" in the area of passage production, that her overall reading performance and writing performance were "significantly discrepant" from same age peers, and that her overall math performance was "discrepant" from same age peers.²⁸⁶

115. The draft IEP contained four goals in reading and writing: Basic Reading (Skill: Fluency), Reading Comprehension (Skill: Comprehension), Basic Reading (Skill: Decoding), and Written Expression (Skill: Spelling and Grammar):²⁸⁷

²⁸⁰ Tr. pp.637-638 (Ducheneaux); D27.

²⁸¹ The Parties refer in briefing solely to the "December 2023 IEP." However, the record reflects that the final IEP sent to the Parent in January 2024 differed from the IEP created in December 2023. Therefore, the undersigned refers to these documents separately, as "December 2023 draft IEP" and "January 2024 IEP."

²⁸² D41 at 2-22.

²⁸³ D41 at 6-7.

²⁸⁴ D41 at 5-6.

²⁸⁵ Compare, D11 at 7, D41 at 8. See also, D6 at 28-29.

²⁸⁶ D41 at 7-9.

²⁸⁷ D41 at 8-10.

Annual Goal: Basic Reading

Supports the student's post secondary goals:

Yes ☒ No ☐

Skill: Fluency

By 12/17/2024, when given an unfamiliar instructional level literary or informational text and asked to read aloud [REDACTED] will read the text aloud improving her fluency from 79 WCPM with 85% accuracy to 150 WCPM with 95% accuracy on 3 out of 4 opportunities as measured by bi-weekly progress monitoring assessments.

How will progress toward this goal be reported?

☒ Written Progress Report ☐ Other

Report of Student Progress: Quarterly

Annual Goal: Reading Comprehension

Supports the student's post secondary goals:

Yes ☒ No ☐

Skill: Comprehension

By 12/17/2024, when given a short passage to read [REDACTED] will answer a series of related open-ended and multiple questions improving her reading comprehension from 60% correct literal questions and 72% inferential questions to 70% correct literal questions and 82% inferential questions 3 out of 4 opportunities as measured by bi-weekly progress monitoring.

How will progress toward this goal be reported?

☒ Written Progress Report ☐ Other

Report of Student Progress: Quarterly

Annual Goal: Basic Reading

Supports the student's post secondary goals:

Yes ☒ No ☐

Skill: Decoding

By 12/17/2024, when given an adapted, grade-level, literary text with 15 teacher-selected, multisyllabic words reflecting 6 syllable types (e.g. open, closed, VCe, vowel teams, vowel teams-consonant, consonant-le, r-controlled) [REDACTED] will read the passage aloud and correctly decode each teacher-selected word by first dividing them into syllables improving their decoding skills from reading aloud 0% accuracy (new goal) to reading aloud 80% accuracy (i.e. 12 out of 15 words) for 4 out of 5 adapted, grade-level texts as measured by bi-weekly progress monitoring using adapted, grade-level texts.

How will progress toward this goal be reported?

☒ Written Progress Report ☐ Other

Report of Student Progress: Quarterly

Annual Goal: Written Expression

Supports the student's post secondary goals:

Yes ☒ No ☐

Skill: Spelling and Grammar

By 12/17/2024, when given a writing assignment and a print or digital dictionary [REDACTED] will work with a instructor/teacher to write a 5 paragraph essay using at least 2 resource (e.g. print dictionary, word-processing spell-check) to verify and correct spelling improving her written expression skills from writing a multi-paragraph essay of 250 words with a 10% error rate to writing a multi-paragraph essay of 750 words with a 5% error rate or less as measured by bi-weekly progress monitoring writing assignments.

How will progress toward this goal be reported?

☒ Written Progress Report ☐ Other

Report of Student Progress: Quarterly

116. The draft IEP also contained two goals in math: Math Calculation (Multi-Digit Computation) and Math Calculation (Solving Practical Word Problems).²⁸⁸

²⁸⁸ The record does not contain an original version of the December 2023 draft IEP math goals. The math goals were updated and e-mailed to the Parent on January 11, 2024, after Mr. Conant conducted progress monitoring. D41 at 1, 7-8.

117. The draft IEP outlined a special education and related services matrix provided the following SDI, to be provided by a special education teacher and monitored by a special education teacher, within the special education setting.²⁸⁹

Services 12/19/2023 - 12/17/2024							
Concurrent	Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)	Start Date	End Date
Special Education							
No	Basic Reading	Special Education Teacher	Special Education Teacher	300 Minutes / 1 Times Monthly	Special Education	12/19/2023	12/17/2024
No	Math Calculation	Special Education Teacher/Paraeducator	Special Education Teacher	660 Minutes / 1 Times Monthly	Special Education	12/19/2023	12/17/2024
No	Reading Comprehension	Special Education Teacher/Paraeducator	Special Education Teacher	200 Minutes / 1 Times Monthly	Special Education	12/19/2023	12/17/2024
No	Written Expression	Special Education Teacher/Paraeducator	Special Education Teacher	160 Minutes / 1 Times Monthly	Special Education	12/19/2023	12/17/2024
Total minutes per week of building instructional time available for this student (excluding lunch):				1710 minutes per week			
Total minutes per week student is served in a special education setting:				330 minutes per week			
Percent of time in general education setting:				80.7% in General Education Setting			

118. The draft IEP contained fifteen accommodations, and a single modification.²⁹⁰ These included several additional accommodations recommended by Dr. Dupuy, such as allowing word problems in math to be read aloud and providing for and allowing for testing in a small and quiet setting.²⁹¹

119. The draft IEP also provided supports for school personnel to address literacy concerns:²⁹²

Supports for School Personnel (training, professional development, etc.):

Supports(s)	Frequency	Location	Duration m/d/y to m/d/y
Collaborative support and planning with district literacy specialist	Every two weeks	All settings	12/19/2023 to 12/17/2024

120. The draft IEP outlined the Student's new transitional goal to enroll in a Veterinarian Tech program.²⁹³ The IEP indicated that during a December 12, 2024 student interview, the Student indicated that she wanted to pursue a Pre-Veterinary Technology Program at the PCSC, and then apply to a 2-year Veterinary Assistant

²⁸⁹ D41 at 17.

²⁹⁰ D41 at 16.

²⁹¹ D41 at 14-15.

²⁹² D41 at 15.

²⁹³ D41, at 7-10, 14; Tr. p.442 (Conant).

program at a local college.²⁹⁴ The IEP identified a Secondary Transitional plan and a projected graduation date of June 28, 2024.²⁹⁵

1. Post Secondary Goals/Outcomes

Define and project the desired post-secondary goal as identified by the student, parent, and IEP team in the available content areas. Transition Services may be special education, if provided as specifically designed instruction or related services. These services would be included in the Service Matrix section of the IEP.

Content Area: Education/Training	
Upon leaving public school () will attend a Veterinary Technician program at a local college.	
Transition Services	Staff / Agency Responsible
Education - () will receive SDI in basic reading, reading comprehension, written expression, and math calculation to help prepare her for the rigors of attending a 2 year Veterinary Technician program.	Special Education
Community Connections - Through the PCSC, () will connect with local colleges offering Veterinary Technician programs.	Pierce County Skills Center

Content Area: Employment	
Upon leaving public school () will () will be employed in a veterinary office as a technician or assistant.	
Transition Services	Staff / Agency Responsible
Education - () is currently enrolled in the Pre-Veterinary Technology program learning the required skills to prepare her to attend a two year veterinary technician program. () will also be First Aid /CPR certified at the completion of her program.	Pierce County Skills Center
Community Connections - () will research local colleges like Pierce College offering programs in veterinary sciences.	Career Counseling Center

District Literacy Specialist

121. The District anticipated it would coordinate the Student's literacy services with Suzanne Paul, the District Literacy Specialist.²⁹⁶ Prior to the IEP meeting, Mr. Sander communicated with Ms. Paul, and she recommended that the school use the University of Florida Literacy Institute (UFLI) Foundations program, an elementary literacy program.²⁹⁷ Ms. Paul recommended the District pair UFLI with more age appropriate decodable text for the Student, and agreed to consult with Mr. Conant and the IEP team in implementing the program for the Student.²⁹⁸

122. Ms. Paul is nationally board-certified in the area of literacy and reading through the Institute for Multisensory Education in Orton-Gillingham strategies.²⁹⁹ Orton-Gillingham is a methodology of teaching phonological awareness, phonics and high-

²⁹⁴ D41 at 10-11; D40.

²⁹⁵ D41 at 10-11.

²⁹⁶ Suzanne Paul is the District Elementary Literacy Specialist, and has held this position for thirteen years. She has a master's degree in administration, a BA in elementary education and ELA, and a K-12 teaching certificate. Ms. Paul received her national board certification in Language Essentials for Teachers of Reading and Spelling (LETRS) in 2010, and her national board certification in the area of literacy and reading in the Orton-Gillingham literacy program in 2021. She was an instructional coach in the Tacoma School District for five years, and currently coaches teachers on learning the science of reading and how to implement that practice into their instruction. Tr. pp.217-219, pp.233-234 (Paul). See also, P31; Tr. pp.133-132 (Sander).

²⁹⁷ P31; Tr. p.138 (Sander).

²⁹⁸ Id.

²⁹⁹ Tr. pp.218-219; P31.

frequency words through an explicit and structured multisensory approach to these foundational skills.³⁰⁰ Ms. Paul has worked as instructional coach for teachers on the science of reading and how to implement that practice into their instruction.³⁰¹ Ms. Paul works with both special education and general education teachers in literacy methods.³⁰² She both shares resources and specific reading strategies, and also provides co-teaching support.³⁰³

123. Prior to recommending the UFLI literacy program for the Student, Ms. Paul had reviewed the program for use in the District.³⁰⁴ Similar to Orton-Gillingham, UFLI is an explicit, systematic phonics program consistent with the tenants of structured literacy, which starts with simple phonemes (sounds of the English language), then builds to the more complex sounds and phonemes.³⁰⁵

124. UFLI curriculum was developed both as a core curriculum for Kindergarten through second graders (K-2), but is also used as an intervention for students who have not yet mastered skills typically taught in these grades.³⁰⁶ The UFLI program uses specific strategies that can be used with any grade level, and can be modified to fit intermediate students.³⁰⁷ The District has the ability to generate age appropriate high-school level decodable reading examples to use with UFLI.³⁰⁸

125. Ms. Paul was not concerned that the teachers providing services to the Student would not be trained in UFLI, as she was available to assist in on-going training to use the UFLI method.³⁰⁹ Ms. Paul further explained that UFLI requires initial asynchronous teacher training through on-line videos, but UFLI also allows for “training as you go.”³¹⁰ Ms. Paul believed it was possible for a teacher without any experience in providing literacy instruction could implement the UFLI program with appropriate support, such as coaching, modeling and providing feedback, perhaps daily in the beginning and then backing off.³¹¹

³⁰⁰ Tr. pp.219 (Paul).

³⁰¹ Id.

³⁰² Tr. p.234-235 (Paul).

³⁰³ Tr. p.223-234 (Paul).

³⁰⁴ Tr. p.225, pp.237-238 (Paul); P61.

³⁰⁵ Tr. p.225 (Paul); P62.

³⁰⁶ Tr. p.225-226 (Paul).

³⁰⁷ Tr. p.226 (Paul).

³⁰⁸ Tr. pp.229-330 (Paul).

³⁰⁹ Tr. p.230-231 (Paul).

³¹⁰ Tr. p.230 (Paul).

³¹¹ Tr. pp.240-242 (Paul).

126. In preparation for the hearing, Ms. Paul reviewed the Student's December 2023 IEP and Dr. Dupuy's IEE.³¹² In Ms. Paul's opinion, the Student presented some of the same literacy needs of other intermediate students in the District.³¹³ Ms. Paul believed that the Student did not require a residential program to address her reading, and that her reading concerns could have been addressed within a classroom in the District.³¹⁴ Ms. Paul emphasized that the Student's December 2023 IEP offered her literacy support services "in all settings," meaning that she could provide them with any of the Student's instructors.³¹⁵

December 2023 IEP Meeting

127. The December 14, 2023, IEP meeting attendees included the Parent, the Student, Dr. Dupuy, Mr. Sander, Carol Miller, Director, Learning Support Services, Mr. Gandara, Mr. Fagan, Mr. Conant, Richard O'Flaherty, general education teacher), the Parent's attorney, and the District's attorney.³¹⁶ During the December 14, 2023 IEP meeting, the District presented the draft IEP, which contained four goals in reading and writing, and two goals in math.³¹⁷

128. Mr. Conant expressed during the meeting that the IEP goals were appropriate.³¹⁸ Mr. Conant also spoke with the Student about her transition goals, and understood that she wanted to continue at the PCSC Vet Tech program, and wanted to attend Pierce College's two-year Vet Tech program after graduation.³¹⁹

129. The District presented the UFLI program to the Parent as an appropriate reading program.³²⁰ Dr. Dupuy was familiar with the UFLI curriculum, but had not administered the program and no longer teaches decoding.³²¹ Nevertheless, Dr. Dupuy expressed UFLI was an inappropriate curriculum for the Student.³²² She expressed that an instructor using UFLI for a student of the Student's age would have to create appropriate grade-level text.³²³ Dr. Dupuy further expressed that any teacher providing direct instruction to the Student should have adequate training in the tenets of

³¹² Tr. p.221-222 (Paul).

³¹³ Id.

³¹⁴ Id.

³¹⁵ Tr. p.224 (Paul).

³¹⁶ Tr. p.442 (Conant); D41 at 4.

³¹⁷ Tr. p.442 (Conant).

³¹⁸ Tr. p.412-413 (Conant); D41.

³¹⁹ Tr. pp.410-411 (Conant); D11 at 9.

³²⁰ P33 at 2-3; Tr. pp.1099-1100 (Parent).

³²¹ Tr. p.984 (Dupuy).

³²² Tr. p.708, pp.726-727, pp.902-904 (Dupuy).

³²³ Id.

teaching decoding and literacy, not simply be overseen by another instructor trained in UFLI.³²⁴

130. Dr. Dupuy suggested the Student receive 60 minutes per day in SDI specifically for the goal of decoding, rather than the 300 minutes/month outlined in the Draft IEP in both basic reading goals of decoding and fluency.³²⁵ Dr. Dupuy suggested the Student receive a total 120 minutes per day in both fluency and reading comprehension, specifically 30-40 minutes per day in reading comprehension, rather than 200 minutes per month in reading comprehension.³²⁶ Dr. Dupuy also suggested the Student receive 60 minutes per day in SDI for the goal of written expression, rather than the 160 minutes/month outlined in the draft IEP, to permit proper teaching of spelling, parts of speech, syntactic structure, phrasing, and prewriting.³²⁷

131. The IEP team participants extensively discussed the services and goals outlined in the IEP, discussed whether the Student could receive enough minutes of SDI to align with Dr. Dupuy's recommendations, and discussed whether the Student should not attend the vet tech program and instead remain at the Franklin Pierce campus to receive SDI.³²⁸ The IEP meeting attendees discussed the difficulty of finding enough time in the Student's schedule to provide the requested minutes of SDI, as she spent time off campus in a Vet Tech program.³²⁹

132. Based on Dr. Dupuy's opinions, the Parent believed that Mr. Conant did not have sufficient literacy training to implement literacy instruction.³³⁰ The Parent asked the District to provide a plan to provide the Student with 1:1 reading instruction with adequate minutes by someone with relevant training and experience in teaching reading literacy.³³¹ The Parent also requested that the IEP team remove the Student's vet tech classes to receive more minutes of SDI in reading.³³² The Parent's attorney also suggested that the District provide two IEP options, one with the vet tech program and one without, so the Parent could consider these options.³³³

³²⁴ Id.

³²⁵ Tr. pp.906-907 (Dupuy); D11 at 7-8, 16.

³²⁶ Tr. pp.734-735 (Dupuy); Tr. p.768 (Dupuy); D11 at 7-8, 16.

³²⁷ Tr. pp.909-911 (Dupuy); D11 at 9, 16,

³²⁸ P33 at 2-3; Tr. pp.1099-1100 (Parent); Tr. p.412 (Conant).

³²⁹ Tr. pp.907-908 (Dupuy).

³³⁰ Tr. pp.1101-1102 (Parent); P84 at 3, ¶15, ¶17.

³³¹ Tr. pp.1098-1099 (Parent); P33; P84 at 2-3, ¶13.

³³² Tr. pp.515-516 (Bube); P83 at 3, ¶15.

³³³ Id.

133. Mr. Gandara provided notes summarizing the meeting.³³⁴ The notes indicated that Dr. Dupuy would send IEP goal suggestions.³³⁵ The Parent declined to make any formal comments on the draft IEP until they had spoken with counsel.³³⁶ The Parent did not agree with or sign the IEP, and left the Zoom meeting after the IEP was presented.³³⁷ The Parent never sent any additional input for the IEP.³³⁸

134. A PWN dated December 14, 2023, proposed implementing the December 2023 IEP on December 19, 2023.³³⁹

135. On December 17, 2023, Dr. Dupuy emailed Mr. Conant suggested IEP goals in phonological processing, decoding, reading fluency, reading comprehension, writing, math computation, and executive functioning.³⁴⁰ Dr. Dupuy recommended an 8th grade level for reading comprehension, but did not specify a grade level recommendation for decoding or reading fluency.³⁴¹ Dr. Dupuy did not suggest any particular literacy program, simply stating that her suggested goals were “[b]ased on the tenants of Structured Literacy and the Science of Reading.”³⁴²

136. Mr. Conant reviewed Dr. Dupuy’s December 17, 2023, e-mail and suggested IEP goals.³⁴³ He was concerned that the suggested goals in “phonological processing” were geared towards someone much more challenged than the Student.³⁴⁴ He agreed that an 8th grade literacy level would be appropriate for all areas of reading, as it was the highest level in progress monitoring passages available to the District.³⁴⁵

Fall 2023 Progress

137. The Student passed all her first semester 2023-2024 classes, receiving a B- in her PCSC Pre Veterinary Tech class, a C in Bridge to College English, a B- in Civics, and an A in Washington State History:³⁴⁶

³³⁴ P33.

³³⁵ Id.

³³⁶ D11 at 4; D33 at 2; Tr. pp.1180-1181 (Parent).

³³⁷ D41; Tr. p.442 (Conant).

³³⁸ P33 at 2-3; Tr. pp.1182-1183 (Parent).

³³⁹ D41 at 22.

³⁴⁰ Tr. pp.788-791 (Dupuy); P34.

³⁴¹ P34 at 3; Tr. p.767 (Dupuy).

³⁴² P34 at 1.

³⁴³ Tr. p.416 (Conant); P34.

³⁴⁴ Tr. pp.416, 420-421 (Conant); P34 at 2.

³⁴⁵ Tr. p.471-472 (Conant).

³⁴⁶ D12.

MO/YR 11/2023		GRD	12
TRELE1	PCSC: PRE VETERINARY	B-	1.000 1.000 T
	TEC 10CC		
TRSCI1	PCSC: PRE VETERINARY	B-	0.500 0.500
	TECH 1SCI		
MO/YR 01/2024		GRD	12
WAO001	ENG423	BRIDGE TO COLLEGE	C 0.500 0.500 B
	ENG SR 1		
04161	SST411	CIVICS	B- 0.500 0.500 B
08002	HPE118	TEAM SPORTS	B 0.500 0.500
	TRSST1	IND STUDY: WA STATE	A 0.500 0.500
	HISTORY		

January 2024 IEP

138. The District's winter break lasted from December 20, 2023 to January 3, 2024.³⁴⁷ After school resumed, Mr. Conant conferred with teachers at Franklin Pierce about the provision of increased SDI and 1:1 reading instruction for the Student.³⁴⁸ On or around January 11, 2024, Mr. Conant also met with the Student to gather baseline data for proposed IEP math goals.³⁴⁹ During that meeting, the Student emphasized that she wanted to finish her vet tech classes at PCSC.³⁵⁰

139. Mr. Conant spoke with Mr. Gandara about how SDI and services would be provided to the Student during 2nd semester, as the days were split into A and B days on which the Student had different schedules.³⁵¹ Due to the schedule split, the IEP team had to count total minutes per month because it could not guarantee how many minutes would be serviced in a shorter time span, such as a week.³⁵²

140. Mr. Conant conferred with school staff about setting up a 1:1 ELA resource class for the Student to provide 1:1 reading instruction for the Student as requested by the Parent.³⁵³ He arranged for Ms. Huff, a special education paraeducator, to provide the Student with 1:1 SDI in reading, and for him to supervise the SDI, during eighth-period in his office as a resource room.³⁵⁴ Mr. Conant also set up a meeting with Ms. Paul, the District literacy specialist, although this meeting did not occur before the Student last attended school on February 6, 2024.³⁵⁵

141. Second semester of the 2023-2024 school year was scheduled to begin on Monday, January 29, 2024, and the school again followed an alternating A/B class

³⁴⁷ D48.

³⁴⁸ Tr. pp.452-455 (Conant).

³⁴⁹ D41.

³⁵⁰ D41 at 1; Tr. pp.411-412 (Conant).

³⁵¹ D41; D42; Tr. pp.452-455 (Conant); Tr. p.68 (Sander).

³⁵² Tr. pp.454-455 (Conant).

³⁵³ D46; Tr. pp.455 (Conant); P84, p.2, ¶13.

³⁵⁴ Tr. pp.430-431, 450 (Conant); P36.

³⁵⁵ Tr. pp.423-424 (Conant).

schedule.³⁵⁶ The Student's schedule included the pre-vet tech program and Bridge to College English, as well as a resource room math class during fourth period on alternating A days, and a resource room reading class during eighth-period on alternating B days to be provided by Ms. Huff and monitored by Mr. Conant:³⁵⁷

Period	Class	A/B
1	Pre-Veterinary Tech/PSCS	A
2	Pre-Veterinary Tech/PSCS	A
3	Beginning Guitar	A
4	Pre-Algebra 4	A
5	Pre-Veterinary Tech/PSCS	B
6	Pre-Veterinary Tech/PSCS	B
7	Bridge to College English Sr. 2	B
8	Sen Language Art 2	B

142. On January 11, 2024, Mr. Conant completed progress monitoring for the Student's math problem solving and math calculation skills.³⁵⁸ That same day, he sent the Parent an e-mail informing them that the Student was "adamant about staying in Skills Center 2nd semester."³⁵⁹ He also included the December 2023 draft IEP with modified math goals in Math Calculation (Multi-Digit Computation) and Math Calculation (Solving Practical Word Problems):³⁶⁰

Annual Goal: Math Calculation

Supports the student's post secondary goals:

Yes ☒ No ☐

Skill: Multi-digit Computation

By 12/17/2024, when given an addition/multiplication chart, and 20 math problems containing a variety of computations (e.g. addition, subtraction, multiplication, division, square roots and powers) with numbers that include decimals will solve the problems correctly improving her math calculation skills from correctly calculating the solution for 7 out of 20 equations (35% accuracy) to correctly calculating the solution for 16 out of 20 equations (80% accuracy) as measured by bi-weekly progress monitoring.

How will progress toward this goal be reported?

☒ Written Progress Report ☐ Other

Report of Student Progress: Quarterly

³⁵⁶ D48; P36; Tr. pp.432-433 (Conant).

³⁵⁷ P36; Tr. pp.434-435, pp.437-438 (Conant).

³⁵⁸ P40; Tr. pp.450-451 (Conant).

³⁵⁹ D41 at 1.

³⁶⁰ D41 at 1, 7-8.

Annual Goal: Math Calculation

Supports the student's post secondary goals:

Yes ☒ No ☐

Skill: Solving Practical Word Problems

By 12/17/2024, when given a variety of 20 real-life math problems (e.g. computing tax on a purchase, converting measurements, etc.) [REDACTED] will correctly select the computational method, and complete the computation with the support of a calculator improving their math problem solving skills from being able solve the problem correctly in 7 out of 20 problems (35% accuracy) to being able to find the solution in 16 out of 20 problems (80% accuracy). as measured by bi-weekly progress monitoring.

How will progress toward this goal be reported?

X Written Progress Report

Other

Report of Student Progress: Quarterly

143. Mr. Conant also updated the IEP goals of basic reading (decoding), basic reading (fluency) and reading comprehension to specify “8th grade” level texts as a baseline, the highest level in progress monitoring passages available to the District, and the same literacy level as recommended by Dr. Dupuy for reading comprehension.³⁶¹ Similar to the draft December 2023 IEP, the updated IEP specified that the Student would receive all SDI from a special education teacher/paraeducator, in a special education setting.³⁶²

144. On January 22, 2024, the Parent provided the District with 10-day notice of their intent to unilaterally place the Student at Gow in New York state within 10 business days if it failed to provide the Student appropriate FAPE in reading, writing and math instruction.³⁶³

145. On or around Friday, January 26, 2024 the District sent the finalized IEP to the Parent (January 2024 IEP).³⁶⁴ The IEP did not include any Parent input beyond what was provided at the meeting, as the Parent had not sent any.³⁶⁵

146. The January 2024 IEP did not change the amount of SDI or significantly change any of the goals from those provided in the draft IEP, but specified that the basic reading goals of fluency and decoding, and the reading comprehension goal, would be based on 8th grade levels of text and passages.³⁶⁶ The January 2024 IEP also outlined a changed start date of February 5, 2024, with annual goal dates and duration from February 4, 2024 through February 4, 2025.³⁶⁷ The January 2024 IEP did not remove the Student’s Vet Tech classes.³⁶⁸

³⁶¹ Compare, D41 at 8-9; D11 at 7-8; Tr. p.471-472 (Conant); P34 at 3.

³⁶² Compare, D41 at 17; D11 at 16.

³⁶³ D10.

³⁶⁴ D11; Tr. p.1093 (Parent).

³⁶⁵ D11.

³⁶⁶ D11 at 7-9.

³⁶⁷ Compare, D11, D41.

³⁶⁸ Compare, D11, D41.

147. The January 2024 IEP contained four goals in reading and writing: Basic Reading (Skill: Fluency), Reading Comprehension (Skill: Comprehension), Basic Reading (Skill: Decoding), and Written Expression (Skill: Spelling and Grammar):³⁶⁹

Annual Goal: Basic Reading

Supports the student's post secondary goals:

Yes ☒ No ☐

Skill: Fluency

By 02/04/2025, when given an unfamiliar 8th grade level literary or informational text and asked to read aloud [REDACTED] will read the text aloud improving her fluency from 79 WCPM with 85% accuracy to 150 WCPM with 95% accuracy on 3 out of 4 opportunities as measured by progress monitoring every other week.

How will progress toward this goal be reported?

X Written Progress Report Other

Report of Student Progress: Quarterly

Annual Goal: Reading Comprehension

Supports the student's post secondary goals:

Yes ☒ No ☐

Skill: Comprehension

By 02/04/2025, when given an 8th grade short passage to read [REDACTED] will answer a series of related open-ended and multiple questions improving her reading comprehension from 60% correct literal questions and 72% inferential questions to 70% correct literal questions and 82% inferential questions 3 out of 4 opportunities as measured by progress monitoring every other week.

How will progress toward this goal be reported?

X Written Progress Report Other

Report of Student Progress: Quarterly

Annual Goal: Basic Reading

Supports the student's post secondary goals:

Yes ☒ No ☐

Skill: Decoding

By 02/04/2025, when given an adapted, 8th grade level literary text with 15 teacher-selected, multisyllabic words reflecting 6 syllable types (e.g. open, closed, VCe, vowel teams, vowel teams-consonant, consonant-le, r-controlled) [REDACTED] will read the passage aloud and correctly decode each teacher-selected word by first dividing them into syllables improving their decoding skills from reading aloud 60% accuracy to reading aloud 80% accuracy (i.e. 12 out of 15 words) for 4 out of 5 adapted, grade-level texts as measured by progress monitoring every other week using adapted, grade-level texts.

How will progress toward this goal be reported?

X Written Progress Report Other

Report of Student Progress: Quarterly

Annual Goal: Written Expression

Supports the student's post secondary goals:

Yes ☒ No ☐

Skill: Spelling and Grammar

By 02/04/2025, when given a writing assignment and a print or digital dictionary [REDACTED] will work with a instructor/teacher to write a 5 paragraph essay using at least 2 resource (e.g. print dictionary, word-processing spell-check) to verify and correct spelling improving her written expression skills from writing a multi-paragraph essay of 250 words with a 10% error rate to writing a multi-paragraph essay of 750 words with a 5% error rate or less as measured by progress monitoring every other week.

How will progress toward this goal be reported?

X Written Progress Report Other

Report of Student Progress: Quarterly

³⁶⁹ D11 at 7-9.

148. The January 2024 IEP also contained two goals in math: Math Calculation (Multi-Digit Computation) and Math Calculation (Solving Practical Word Problems):³⁷⁰

Annual Goal: Math Calculation

Supports the student's post secondary goals:

Yes ☒ No ☐

Skill: Multi-digit Computation

By 02/04/2025, when given an addition/multiplication chart, and 20 math problems containing a variety of computations (e.g. addition, subtraction, multiplication, division, square roots and powers) with numbers that include decimals [REDACTED] will solve the problems correctly improving her math calculation skills from correctly calculating the solution for 7 out of 20 equations (35% accuracy) to correctly calculating the solution for 16 out of 20 equations (80% accuracy) as measured by progress monitoring conducted every other week.

How will progress toward this goal be reported?

☒ Written Progress Report ☐ Other

Report of Student Progress: Quarterly

Annual Goal: Math Calculation

Supports the student's post secondary goals:

Yes ☒ No ☐

Skill: Solving Practical Word Problems

By 02/04/2025, when given a variety of 20 real-life math problems (e.g. computing tax on a purchase, converting measurements, etc.) [REDACTED] will correctly select the computational method, and complete the computation with the support of a calculator improving their math problem solving skills from being able solve the problem correctly in 7 out of 20 problems (35% accuracy) to being able to find the solution in 16 out of 20 problems (80% accuracy). as measured by progress monitoring conducted every other week.

How will progress toward this goal be reported?

☒ Written Progress Report ☐ Other

Report of Student Progress: Quarterly

149. The January 2024 IEP outlined a special education and related services matrix to provide 1320 minutes per month of SDI to be provided by a special education teacher and monitored by a special education teacher within the special education setting:³⁷¹

Services 02/05/2024 - 02/04/2025

Concurrent	Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)	Start Date	End Date
Special Education							
No	Math Calculation	Special Education Teacher/Paraeducator	Special Education Teacher	660 Minutes / 1 Times Monthly	Special Education	02/05/2024	02/04/2025
No	Written Expression	Special Education Teacher/Paraeducator	Special Education Teacher	160 Minutes / 1 Times Monthly	Special Education	02/05/2024	02/04/2025
No	Basic Reading	Special Education Teacher/Paraeducator	Special Education Teacher	300 Minutes / 1 Times Monthly	Special Education	02/05/2024	02/04/2025
No	Reading Comprehension	Special Education Teacher/Paraeducator	Special Education Teacher	200 Minutes / 1 Times Monthly	Special Education	02/05/2024	02/04/2025

Total minutes per week of building instructional time available for this student (excluding lunch):

1710 minutes per week

Total minutes per week student is served in a special education setting: 330 minutes per week

Percent of time in general education setting:

80.7% in General Education Setting

Description of Services:

[REDACTED] receives SDI (Specially Designed Instruction) in basic reading, reading comprehension, written expression, and math calculation in a resource setting daily.

³⁷⁰ D11 at 6-7.

³⁷¹ D11 at 16, 19.

150. The January 2024 IEP contained fifteen accommodations, and a single modification: “Grading Modifications: base grade for course on modified standards (will modify content).”³⁷² The IEP included several additional accommodations recommended by Dr. Dupuy, such as allowing word problems in math to be read aloud, and providing for and allowing for testing in a small and quiet setting.³⁷³

151. The January 2024 IEP again provided supports for school personnel to address literacy concerns:³⁷⁴

Supports for School Personnel (training, professional development, etc.):

Supports(s)	Frequency	Location	Duration m/d/y to m/d/y
Collaborative support and planning with district literacy specialist	Every two weeks	All settings	12/19/2023 to 12/17/2024

152. The January 2024 IEP further reflected that, based on a December 12, 2024 student interview, the Student wanted to pursue a Pre-Veterinary Technology Program at the PCSC, and then apply to a 2-year Veterinary Assistant program at a local college.³⁷⁵ The IEP identified a Secondary Transitional plan and a projected graduation date of June 28, 2024:³⁷⁶

I. Post Secondary Goals/Outcomes

Define and project the desired post-secondary goal as identified by the student, parent, and IEP team in the available content areas. Transition Services may be special education, if provided as specifically designed instruction or related services. These services would be included in the Service Matrix section of the IEP.

Content Area: Education/Training	
Upon leaving public school [REDACTED] will attend a Veterinary Technician program at a local college.	
Transition Services	Staff / Agency Responsible
Education - [REDACTED] will receive SDI in basic reading, reading comprehension, written expression, and math calculation to help prepare her for the rigors of attending a 2 year Veterinary Technician program.	Special Education
Community Connections - Through the PCSC, [REDACTED] will connect with local colleges offering Veterinary Technician programs.	Pierce County Skills Center
Content Area: Employment	
Upon leaving public school [REDACTED] will be employed in a veterinary office as a technician or assistant.	
Transition Services	Staff / Agency Responsible
Education - [REDACTED] is currently enrolled in the Pre-Veterinary Technology program learning the required skills to prepare her to attend a two year veterinary technician program. Hannah will also be First Aid /CPR certified at the completion of her program.	Pierce County Skills Center
Community Connections - [REDACTED] will research local colleges like Pierce College offering programs in veterinary sciences.	Career Counseling Center

³⁷² D11 at 16.

³⁷³ D11 at 13-14. See also, D6 at 32-34.

³⁷⁴ D11 at 14.

³⁷⁵ D11 at 9-10; D40.

³⁷⁶ D11 at 9-10.

153. The January 2024 IEP did not mention the Student's ADHD diagnosis, or any concerns about executive functioning, but included prior teacher input indicating that the Student had completed all required work for graduation in advisory and had not needed support, had completed all her work in Civics, and had helped those around her in Bridge to College English while staying on track with her own assignments.³⁷⁷

154. Finally, the PWN reflected that the IEP team considered and rejected placing the Student at Gow residential school in New York.³⁷⁸ The IEP indicated that the Student's current placement reflected her least restrictive environment (LRE), would enable the Student to make appropriate progress under her IEP, and that placement at Gow would be inconsistent with the Student's identified transition goals.³⁷⁹

155. The PWN contained an initiation date of December 19, 2023, the same date as the IEP meeting.³⁸⁰ Mr. Conant agreed that this date was auto-filled from the December 2023 draft IEP and that he failed to correct this date, and emphasized that the final IEP was sent to the Parent on January 26, 2024.³⁸¹

Implementation of January 2024 IEP

156. During second semester, the Student met with Ms. Huff 2-3 times during eighth-period on A days in Mr. Conant's office.³⁸² During these sessions, Ms. Huff used the resource reading curriculum "Read to Achieve" with the Student.³⁸³ Mr. Conant observed the Student read aloud from the textbook and answer comprehension-level questions, while Ms. Huff helped the Student with sounding out words.³⁸⁴

157. The Student last attended school in the District on Tuesday, February 6, 2024.³⁸⁵

158. The Parent acknowledges that Mr. Conant and Ms. Huff provided the Student with 1:1 instruction in reading "for a couple of weeks" before she left school.³⁸⁶ The Parent assert that the Student did not initially tell them that this instruction had

³⁷⁷ D11 at 5.

³⁷⁸ D11 at 19.

³⁷⁹ Id.

³⁸⁰ D11; Tr. pp.446-447 (Conant).

³⁸¹ D11; Tr. pp.447-448 (Conant).

³⁸² Tr. pp.431-432 (Conant); D48.

³⁸³ Id.

³⁸⁴ Tr. pp.433 (Conant).

³⁸⁵ Tr. pp.423-424 (Conant); Tr. pp.1150 (Parent).

³⁸⁶ Tr. pp.1098-1101 (Parent); P84 at 2-3, ¶13.

occurred, and they did not learn about this 1:1 instruction until sometime after the Student transferred to Gow.³⁸⁷

2024 Enrollment at Gow

159. The Student and Parent traveled to Gow on February 16, 2024, and the Student began attending school at Gow on February 19, 2024.³⁸⁸

160. Robin Marshman, is the Head of the Upper School at Gow.³⁸⁹ Gow is a private boarding school that specializes in the remediation of dyslexia and other language-based learning disabilities such as Attention Deficit Disorder (ADD), ADHD, executive functioning difficulties, dyspraxia, central auditory processing disorder, dyscalculia and dysgraphia.³⁹⁰ In 2023-2024, Gow had 109 students, ranging from 5th grade to 12th grade, and maintained a 4-1 ratio of students to teachers.³⁹¹ Each year, all Gow instructors receive a 1-week training in Gow's reconstructive language program, a reading program which is provided to all students to help address reading challenges.³⁹² Gow is college prep program; instruction is designed to educate students with special needs while preparing them academically for college.³⁹³

161. A typical student at Gow has dyslexia with an average to above average IQ, and their reading level is far below what would be considered grade level.³⁹⁴ Prior to the Student's admission, the Gow admissions committee reviewed the Student's neuropsychological evaluation from Dr. Dupuy, and determined that her profile was a good match for the school.³⁹⁵

162. Gow's reconstructive language program is phonics-based, multisensory reading program which is taught in a structured and systematic way to support reading and literacy skills.³⁹⁶ Gow's program is similar to the Orton-Gillingham training, and is accredited by the International Multisensory Structured Language Education Council

³⁸⁷ Tr. pp.1098-1101 (Parent); P84 at 2, ¶13.

³⁸⁸ D14; P84 at 1, ¶2; P92 at 1, ¶4, at 2, ¶6.

³⁸⁹ Robin Marshman received a Bachelor of Science in Mechanical Engineering in 1997, followed by a one-year post graduate certification in education. Mr. Marshman completed a master's degree in mathematics for teachers in 2013. He began working at Gow in 1998 as a math teacher, became head of the math department in 2022, and became Head of the Upper School in 2016. As Head of the Upper School, he oversees the academic program for students in grades 10, 11, 12, and is part of the admissions committee. Tr. pp.862-864 (Marshman); P82.

³⁹⁰ Tr. pp.863-864 (Marshman); P82, ¶4.

³⁹¹ Tr. pp.863-865 (Marshman); P82, ¶5.

³⁹² Tr. pp.863-864 (Marshman); P82, ¶6.

³⁹³ Tr. pp.863-865 (Marshman); P82, ¶4.

³⁹⁴ Tr. pp.868-869 (Marshman).

³⁹⁵ Tr. p.867-868 (Marshman); D6; P82, ¶¶11-12.

³⁹⁶ Tr. pp.799, 831-832 (Thompson).

(IMSLEC).³⁹⁷ The program addresses phonology and phonics, orthography with spelling, morphology and word parts, vocabulary, oral reading fluency, and comprehension.³⁹⁸ The language course is integrated into every student's daily program to address reading skills, spelling skills, and specific reading comprehension strategies through daily lessons, assignments and projects.³⁹⁹

163. Gow uses its reconstructive language program with various grade levels, including high school students.⁴⁰⁰ Gow's reconstructive language teachers receive initial training and a three-year supervised practicum including observing and coaching by the department chair to ensure the teacher is adhering to the instructional methods of the program.⁴⁰¹ All teachers at Gow have received at least a week of reconstructive language training, and are familiar with the foundations of the program and the basic 113 phonics cards used in the program, so that they can reinforce the language training in regular classes.⁴⁰²

164. On February 19, 2024, Dr. Mary Jo Renick, Ph.D., Director of Research & Assessment at Gow, conducted an admission assessment of the Student.⁴⁰³ The various tests assessed the Student's ability to retrieve names of symbols, identify nonsense words, spell, read orally, and write, and also tested her current academic achievement levels.⁴⁰⁴

165. February 2024 Gow testing reflected that the Student's phonetic decoding of unfamiliar words was "significantly impaired."⁴⁰⁵ The Student tested in the 5.5 grade level (3rd percentile) in oral reading and decoding; 3rd grade level (1st percentile) in reading fluency; 5th grade level (5th percentile) in reading comprehension; and 5.2 grade level in spelling.⁴⁰⁶

166. However, the February 2024 Gow testing further reflected that the Student scored well in written language, overall reading and math on achievement testing.⁴⁰⁷ The Student scored in the 75th percentile in spontaneous writing on the Test of Written Language – 4th Edition (TOWL-4).⁴⁰⁸ On the Stanford Achievement Test – 10th Edition

³⁹⁷ Tr. pp.800-801 (Thompson).

³⁹⁸ Tr. p.799 (Thompson).

³⁹⁹ Tr. pp.863-864 (Marshman); P82, ¶7.

⁴⁰⁰ Tr. p.805 (Thompson).

⁴⁰¹ Tr. p.808 (Thompson).

⁴⁰² Tr. p.803-804 (Thompson).

⁴⁰³ D13; D14.

⁴⁰⁴ Id.

⁴⁰⁵ D13.

⁴⁰⁶ D13; D14.

⁴⁰⁷ Id.

⁴⁰⁸ Id.

(Stanford 10), the Student scored 8.8 grade equivalent in total reading (9.5 grade level in reading vocabulary and 7.6 grade level in reading comprehension); and 9.5 grade equivalent in mathematics.⁴⁰⁹

167. In May 2023, Gow conducted an updated assessment of the Student's ability to decode, spell, read orally, and write⁴¹⁰ The assessment reflected that during her three months at Gow, the Student improved from 39% to 42% in phonetic decoding; improved from 5.2 grade level to 5.6 grade level in spelling; improved from 3rd grade level to 3.2 grade level in reading fluency; and improved from 5th grade level to 5.4 grade level in reading comprehension.⁴¹¹

168. During the 2023-2024 school year at Gow, the Student was enrolled in Algebra 2, English 11, Drawing and Painting 1, Reconstructive Language 11, Chemistry, and Global Studies 2.⁴¹² In Algebra 2, the Student was in a class of five students, received access to extra homework help during a tutorial, and earned a final grade of B.⁴¹³ In English 11, the Student was in a class of five students, received extra tutorials and extra assistance in planning and writing a final essay, and earned a final quarter grade of A-.⁴¹⁴ In Reconstructive Language 11, the Student was in a class of four students, received instruction in phonics, roots, syllable division, spelling, oral reading and reading comprehension, and received a final quarter grade of B+.⁴¹⁵

169. Brian Thompson is the Student's current reconstructive language teacher at Gow.⁴¹⁶ Mr. Thompson's course starts at the most basic level reciting and analyzing the alphabet and teaching the most common and simplest phonograms.⁴¹⁷ The program includes content more appropriate to high school students, such reading essays on the history of the English language and how it is formed.⁴¹⁸ Students read aloud every day, receive coaching to develop fluency, choose books to read for pleasure, and are taught comprehension strategies such as questioning and

⁴⁰⁹ Id.

⁴¹⁰ D14, pp.1-2.

⁴¹¹ Id.

⁴¹² P82, ¶13.

⁴¹³ P82, ¶15; D16.

⁴¹⁴ Id.

⁴¹⁵ Id.

⁴¹⁶ Brian Thompson holds a Bachelor of Arts in History and a Master of Science in Education, and received a grades 7-12 teaching certification in 2011 and a K-12 gifted education teaching certificate in 2015 in New York. He has been the Chair of Reconstructive Language Department at Gow School since 2019, and a reconstructive language teacher since 2011. Mr. Thompson began working at Gow in 2011, and completed a 2-week internal reconstructive language training at Gow in 2011 and a week-long Orton-Gillingham Associate Level training in 2013. Tr. pp.797-800 (Thompson); P88.

⁴¹⁷ Tr. pp.802, 805 (Thompson).

⁴¹⁸ Tr. pp.806-807 (Thompson).

maintaining daily reading logs with prompts about the content.⁴¹⁹ Students receive instruction in writing, how to form cursive letters, and in spelling.⁴²⁰ Students also receive supports in executive functioning within the class, including following a structured lesson plan, the teacher signing the student planners to ensure students write down homework, and giving time to place completed assignments in the correct binders.⁴²¹

170. The Student's current reconstructive language course with Mr. Thompson contains five students and meets Monday through Friday for 45 minutes, and for 35 minutes on Saturdays.⁴²² The Student also participates in a required evening study period and maintains a reading log for her personal reading.⁴²³

171. Mr. Thompson does not create specific basic reading or reading fluency goals for students, such as reading a list of words with a specific percentage of accuracy.⁴²⁴ There is also no measure of how much reading instruction the Student may receive in her general education classes.⁴²⁵ Mr. Thompson believes strongly in the efficacy of Gow's reconstructive language program, emphasizing that in the past year his students increased their reading ability by one grade level and opining that the Student could make similar progress.⁴²⁶

172. Mr. Thompson acknowledged that he could not say how much instruction the Student might need to read at a high school level.⁴²⁷ He acknowledged that the Student could make progress in reading without the structured literacy program.⁴²⁸ Mr. Thompson also recalled that during the Student's first semester at Gow, she was pleasure reading a book recommended for 9th – 12th grader.⁴²⁹ Both Mr. Thompson and Ms. Marshman agreed that the Student does not require a residential placement to make academic progress, but stated that the Student does require specialized instruction in the area of reading.⁴³⁰

173. Jay Garvey, the Student's English 11 teacher at Gow, does not have any special education certification, but received two weeks of reconstructive language training at

⁴¹⁹ Tr. pp.814-818 (Thompson); P68.

⁴²⁰ Tr. pp.825-826 (Thompson).

⁴²¹ Tr. pp.826-827 (Thompson).

⁴²² Tr. pp.802-803 (Thompson).

⁴²³ Tr. pp.835-837 (Thompson); P68.

⁴²⁴ Tr. pp.836-837 (Thompson).

⁴²⁵ Tr. pp.839-840 (Thompson).

⁴²⁶ Tr. pp.824-825, 839 (Thompson)

⁴²⁷ Tr. pp.823-824, 839 (Thompson).

⁴²⁸ Tr. p.837, 839 (Thompson); Tr. pp.889-890 (Marshman).

⁴²⁹ Tr. p.834-835 (Thompson).

⁴³⁰ Tr. Day Tr. pp.890 (Thompson).

the start of his career with Gow.⁴³¹ The Student came in near the end of the year when the class was finishing a research paper, so he assisted the Student in writing a reduced version of the paper.⁴³² Mr. Garvey spent one-on-one time with the Student, working on how to summarize sources, identifying details from sources would be most useful, and revising paragraphs to make them more academic.⁴³³ The Student completed a final writing assessment for the class, following an essay prompt of whether they believed their writing was ready for college.⁴³⁴ The Student also read a short story with the class, “In a Grove,” a high school level text.⁴³⁵

174. Charles Brown⁴³⁶ currently teaches the Student’s Pre-Calculus course at Gow for the 2024-2025 school year.⁴³⁷ Mr. Brown received reconstructive language training at Gow, receives annual training, and works with students with multiple language-based learning differences.⁴³⁸ Mr. Brown uses the concepts of reconstructive language in math, particularly when teaching new math vocabulary, to underscore the students’ understanding of the material.⁴³⁹ In Mr. Brown’s experience, students with reading disabilities struggle with text-based questions, both parsing in the words while holding the question in their working memories and also understanding the procedures or algorithms they are being asked to use.⁴⁴⁰ A student’s ability to decode the question allows them to choose an appropriate algorithm and proceed with the question.⁴⁴¹

175. Mr. Brown utilizes visual learning, requiring students to use physical models and graphs and handwrite notes, and provides tutorial time after class both during the study session and at his on-campus home.⁴⁴² Mr. Brown observed that at the time of hearing, in the first five weeks of the class, the Student was working at approximately

⁴³¹ Jay Garvey earned his Bachelor of Arts degree in History in 2002, and a master’s in social studies in 2009. He previously held a New York teaching certification, which has lapsed. He does not hold a special education certification. From 2011 to 2018, Mr. Garvey worked as a Humanities Teacher at a prior boarding school for students with Non-Verbal Learning Disorders (NLD) and Autism Spectrum Disorder (ASD). He has worked at Gow as an English teacher since 2018. Tr. pp.1019-1024 (Garvey); P87.

⁴³² Tr. p.1025 (Garvey).

⁴³³ Tr. pp.1025-1026 (Garvey).

⁴³⁴ Tr. pp.1026-1027 (Garvey); P48.

⁴³⁵ Tr. pp.1028-1029 (Garvey).

⁴³⁶ Charles Brown earned dual Bachelor of Arts degrees in Economics and Music in 1982, and a earned his master’s in mathematics education, with concentration in computer-aided mathematics instruction for learning disabled students, in 1991. He has worked at Gow since 1982 in many capacities including as Instructor in Mathematics and Economics 1982-present, Mathematics Department Chair from 1987-2002, and Director of College Counseling from 2002-Present. Tr. pp.1062-1068 (Brown); P85.

⁴³⁷ Tr. p.1068.

⁴³⁸ Tr. pp.1069-1070 (Brown).

⁴³⁹ Id.

⁴⁴⁰ Tr. pp.1071 (Brown).

⁴⁴¹ Id.

⁴⁴² Tr. pp.1073-1075 (Brown).

a B level, using his classroom instruction and accessing tutorial periods.⁴⁴³ Mr. Brown was unaware the Student had received an F in her prior Algebra 2 course at Franklin Pierce, noting that while she had some holes in her understanding working with fractions and equations, she did not seem like an F student to him.⁴⁴⁴

176. When first enrolled at Gow, the Student also received support from an executive function coach for a brief period of time, but quickly graduated out of extra executive functioning coaching.⁴⁴⁵ The Student's executive functioning support is now being provided at the class level.⁴⁴⁶

Gow Educational Expenses

177. The Parent presented evidence of expenses related to the Student's private placement at Gow.⁴⁴⁷ The Parent seek reimbursement for 2023-2024 tuition, 2024-2025 tuition, travel expenses related to transporting the Student and one Parent to and from the school, the cost of uniforms and dorm supplies, and shipping for those supplies.⁴⁴⁸

Gow Tuition/room and board (2023-24)	\$39,875.00
Gow Tuition/room and board (2024-25)	\$83,000.00
Education Related Travel	\$3,230.79
• Travel to Gow – 02/16/24 – 02/21/24	
o Student/Parent airline tickets (\$536.21)	
o Car Rental (\$623.10)	
o Car Rental Tolls (\$19.81)	
o Travel Insurance (\$60.00)	
• Spring Break – 03/05/24 – 04/05/24	
o Student airline ticket (\$642.96)	
• Summer Break – 05/19/24	
o Student airline ticket (\$193.60)	
• Summer Break – 08/24/2024	
o Student airline ticket (\$223.98)	
• Gow Family Weekend – 10/10/24 – 10/13/24	
o Parent airline tickets (\$667.92)	
o Airbnb (\$263.51)	
School Uniforms/clothing	\$1,180.90
School/dorm supplies	\$809.35
Shipping (school supplies/clothing)	\$178.90

⁴⁴³ Tr. pp.1072-1073 (Brown).

⁴⁴⁴ Tr. pp.1076-1078 (Brown); D12.

⁴⁴⁵ Tr. pp.873-873 (Thompson).

⁴⁴⁶ Id.

⁴⁴⁷ P92 at 2, ¶¶5-7; Tr. pp.1104-1109, 1151-1165 (Parent); P72; P73; P74; P75; P76; P77; P79; P79; P80; P81.

⁴⁴⁸ Id.

178. The Parent also seeks reimbursement for the cost of Dr. Dupuy's attendance at District meetings in the amount of \$481.25.⁴⁴⁹ The Parent is not seeking any reimbursement for their unsuccessful visit to Gow in November 2023.⁴⁵⁰ The Parent is also not seeking reimbursement for Varsity Tutors services the Parent paid for the Student.⁴⁵¹

May 2024 Parent IEE Request

179. On May 14, 2024, while the Student remained enrolled at Gow, the Student and Parent requested the District provide another comprehensive IEE of the Student at District expense, explaining that they disagreed with the District's most recent reassessment conducted in November 2023.⁴⁵²

180. On May 23, 2024, the District requested a hearing on the IEE request.⁴⁵³

Expert Witness Testimony

Dr. Bube

181. Dr. Sue Ann Bube, the District's Director of Special Services, was called as an expert witness for the District regarding the appropriateness of the Student's postsecondary transition plans.⁴⁵⁴ Dr. Bube earned a bachelor's degree in mathematics in 1990, a master's in educational leadership and special education in 2008, and a Doctorate in Educational Leadership in 2014.⁴⁵⁵ She holds a math teaching certificate and a special education teaching certificate, and was nationally board-certified when teaching.⁴⁵⁶ Dr. Bube previously has served as a grade 7-9 math teacher, a grade 1-5 teacher of the deaf, a K-5 special education teacher, an assistant principal in Washington State (2016-2017), the Special Education Supervisor at a prior Washington State school district (2017-2019), has overseen adult transition programs in two other school districts, and has served as a professor in the teaching program at Seattle University instructing students who want to become special education teachers (2014-2016; 2020-Present).⁴⁵⁷

⁴⁴⁹ P92 at 2, ¶¶5-7; Tr. pp.1104-1109, 1151-1165 (Parent); P72; P73; P74; P75; P76; P77; P79; P79; P80; P81.

⁴⁵⁰ Tr. pp.1174-1179 (Parent).

⁴⁵¹ Tr. pp.1108 (Parent); P72.

⁴⁵² D42.

⁴⁵³ OAH Case File.

⁴⁵⁴ Tr. pp.500-505 (Bube); D44.

⁴⁵⁵ Id.

⁴⁵⁶ Id.

⁴⁵⁷ Id.

182. Dr. Bube also serves as an independent consultant to the Washington State Office of Superintendent of Public Instruction (OSPI) working with the special education department to create a field guide and provide technical assistance around non-public agencies (NPA) providing education within and outside Washington State.⁴⁵⁸ Dr. Bube has served as the District's Director of Special Services since 2019, including insuring special education students receive services, and overseeing transition planning for high school students for post-high school plans.⁴⁵⁹

183. Dr. Bube's current position in the District includes assisting in postsecondary transition planning for special-education high school students.⁴⁶⁰ She has participated in over 700 IEP meetings, and over 500 IEP transition plans.⁴⁶¹ While the overall purpose of the IEP is to provide SDI for an individual student, a transition plan adds a component of how the school helps a student makes progress toward postsecondary goals.⁴⁶² Transition plans start around age sixteen.⁴⁶³ At that time, the IEP team looks both at how the Student is making progress in grade-level general education curriculum, but also how it can help a student make progress towards desired postsecondary goals, whether they be postsecondary education, employment or independent living.⁴⁶⁴

184. Dr. Bube opined that the Student's IEPs contained appropriate secondary transition plans, the February 2022 IEP transition plan based on the Student's interest in the culinary arts, and the January 2024 IEP transition plan based on the Student's changed interest in a veterinary technician program.⁴⁶⁵ Dr. Bube emphasized that while the family and IEP team are involved in developing a transition plan, a successful transition plan should be based on a student's postsecondary goals, regardless of whether the student is eighteen years old or not.⁴⁶⁶

185. Dr. Bube noted that during the Student's February 1, 2022 IEP meeting, the Student indicated that she was interested in pursuing culinary arts, while her Parent expressed an interest in her obtaining a GED.⁴⁶⁷ Dr. Bube opined that the Student's February 2023 IEP contained an appropriate secondary transition plan with proper goals, a course of study, and a student survey and interview, all of which reflected the

⁴⁵⁸ Id.

⁴⁵⁹ Id.

⁴⁶⁰ Tr. pp.504-506, 523-524 (Bube).

⁴⁶¹ Id.

⁴⁶² Tr. p.524 (Bube).

⁴⁶³ Tr. p.506 (Bube).

⁴⁶⁴ Tr. pp.506, 523-524 (Bube).

⁴⁶⁵ Tr. pp.508-517, 511-524; D5; D11; D22; D24; D25; P21; P83.

⁴⁶⁶ Tr. pp.516-517 (Bube)

⁴⁶⁷ Tr. pp.507-508 (Bube); D18; D19.

Student's interest in a culinary arts program.⁴⁶⁸ Dr. Bube further opined that the Student's Food Justice course, which she attended during the 2022-2023 school year, was directly related to the Student's interest in culinary arts.⁴⁶⁹

186. Dr. Bube emphasized that in October 2022, the Student expressed interest in a vet tech program at PCSS, and that her Parent recognized changed interest in January 2023.⁴⁷⁰ The Student thereafter enrolled in the PCSS CTE pre-vet tech program in the 2023-2024 school year, and completed volunteer work at an animal shelter and farm.⁴⁷¹ Dr. Bube opined that based on the Student's changed career interest, both the December 2023 draft IEP, and the final January 2024 IEP, contained an appropriate secondary transition plan with proper goals, a course of study, and a student survey and interview, all of which reflected the Student's interest in a vet tech program.⁴⁷²

187. Dr. Bube noted that during the December 2023 IEP meeting, Parent requested that the IEP team remove the Student's vet tech classes to receive more minutes of SDI in reading.⁴⁷³ Dr. Bube opined that the IEP team properly continued the Student in her CTE vet tech program, as it was both an area of interest for the Student, and also the pathway for her high school graduation.⁴⁷⁴ Had the IEP team removed the Student from the CTE vet tech program, they would be required to find another course of study or substitution from the CTE pathway in order for her to graduate.⁴⁷⁵

188. Dr. Bube further emphasized that while the Student's draft December 2023 IEP contained a projected graduation date of June 30 2024, this was not an absolute graduation date but rather the date the Student could walk in the graduation ceremony with her cohort.⁴⁷⁶ Dr. Bube explained that if the IEP team determined that the Student required more services before graduating, the District would not confer the diploma until her needs were met.⁴⁷⁷

189. Dr. Bube disagreed with Dr. Dupuy's assertion, contained in her December 2023 dissent to the draft IEP, that the Student did not have the skills to complete classes at a community college or that she was improperly enrolled in Senior Bridge to

⁴⁶⁸ Tr. pp.508-509 (Bube); D5 at 5-9.

⁴⁶⁹ Tr. pp.509-510 (Bube); D12.

⁴⁷⁰ Tr. pp.510-511 (Bube); D21; D24.

⁴⁷¹ Tr. pp.512-513 (Bube); D49; D12.

⁴⁷² Tr. pp.514-515, pp.526-527 (Bube); D11.at 5-12.

⁴⁷³ Tr. pp.515-516 (Bube); P83 at 3, ¶15.

⁴⁷⁴ Tr. p.516 (Bube).

⁴⁷⁵ Id.

⁴⁷⁶ Tr. pp.522-523 (Bube); D11 at 9-10.

⁴⁷⁷ Id.

College English because she had not completed a Junior English class.⁴⁷⁸ Dr. Bube noted that the Student received a B- in her vet tech class, which is a dual credit class at a community college.⁴⁷⁹ Dr. Bube further emphasized that the Student's Food Justice class is recognized by Washington State as a substitute for Junior English and provided dual-credit in English.⁴⁸⁰

190. In Dr. Bube's opinion, the Student did not require a residential placement to make progress toward grade-level standards, as IEPs should offer the least restrictive placement.⁴⁸¹ Dr. Bube asserted that the District would not have attempted a residential program without first trying other interventions and additional SDI.⁴⁸²

191. Dr. Bube's opinions are accorded significant weight. While she did not work with the Student's teachers or observe the Student in the classroom setting, she reviewed the Student's educational records, IEPs and Dr. Dupuy's December 2023 dissenting opinion. Dr. Bube has extensive experience in developing postsecondary planning for special-education high school students, having participated in over 700 IEP meetings and over 500 IEP transition plans. Since 2019, Dr. Bube has overseen the District's transition planning for high school students' post-high school plans. Further, Dr. Bube has extensive teaching experience in both general and special education, has overseen adult transition programs, and is currently a professor instructing college students who want to become special education teachers.

Dr. Brieger

192. Dr. David Brieger, Ph.D., a licensed psychologist, was called to testify as an expert witness at hearing on behalf of the District regarding the validity of Dr. Dupuy's July 2023 IEE.⁴⁸³ Dr. David Brieger holds a Washington State license in psychology and doctorate in Developmental and Clinical Neuropsychology.⁴⁸⁴ His education includes a postgraduate clinical internship through the American Psychological Association at Henry Ford Hospital, a two-year fellowship at the University of Texas medical branch in the Department of Child Psychiatry, and his Ph.D. thesis addressed learning disorders.⁴⁸⁵

193. Dr. Brieger served as faculty at the University of Washington in the psychology department, where he taught Introduction to Assessment and Advanced Assessment

⁴⁷⁸ Tr. pp.517-519 (Bube); D9 at 12.

⁴⁷⁹ Tr. pp.517-519 (Bube); D9 at 12; D12; D40.

⁴⁸⁰ Tr. pp.520-522 (Bube); D9 at 13.

⁴⁸¹ Tr. pp.527-530 (Bube); D11.

⁴⁸² Tr. pp.531-537 (Bube); D11.

⁴⁸³ Tr. pp.272-277 (Brieger).

⁴⁸⁴ Tr. pp.272-277, 294, 335-338 (Brieger); D43.

⁴⁸⁵ Id.

to clinical students in the graduate program.⁴⁸⁶ This course included learning and introducing psychological and intelligence measures, being able to use interviews, and beginning to write up evaluations.⁴⁸⁷ Dr. Brieger also directed a learning disorders clinic and a neuropsychological consultation service at Seattle Children's Hospital. While at Seattle Children's, he developed and became the first author on a book published by the American Psychological Association that focused on performing evaluations, including IEEs, and how to identify testing performance validity.⁴⁸⁸ Dr. Brieger developed protocols for using video evaluations during the Covid pandemic.⁴⁸⁹ His medical practice covered a broad spectrum of clients, including children with traumatic brain injuries, cancers, mental health issues, and learning disabilities.⁴⁹⁰

194. Dr. Brieger reviewed the Student's February 2022 IEP and related progress reports, the February 2023 IEP and related progress reports, the May 2023 Executive Functioning report, Dr. Dupuy's July 2023 IEE, Dr. Dupuy's CV, the District's November 2023 Reevaluation, Dr. Dupuy's December 2024 dissenting opinion, the January 2024 IEP, the Student's District transcripts, February 2024 Gow Admission testing, and May 2024 Gow testing.⁴⁹¹

195. Dr. Brieger found Dr. Dupuy's methodology and resulting data in the July 2023 IEE to be flawed.⁴⁹² Further, while Dr. Brieger agreed with Dr. Dupuy's conclusion that the Student had an SLD in reading, he disagreed with her conclusions that the Student had an SLD in either written expression or math.⁴⁹³

196. Dr. Brieger noted that Dr. Dupuy is not licensed or credentialed in the area of psychological evaluation or psychology.⁴⁹⁴ Dr. Brieger opined that Dr. Dupuy's failure to identify which of the tests were administered via video undermined the reliability and validity of the testing.⁴⁹⁵ Dr. Brieger opined that Dr. Dupuy's failure to specify whether she used age or grade norms in testing may have resulted in errors in test results.⁴⁹⁶ Dr. Brieger further opined that the IEE did not meet the standard practice of including performance measures to quantify whether the Student was performing

⁴⁸⁶ Id.

⁴⁸⁷ Id.

⁴⁸⁸ Id.

⁴⁸⁹ Id.

⁴⁹⁰ Id.

⁴⁹¹ Tr. pp.272-277, pp.336-338 (Brieger); D1; D2; D5; D6; D8; D9; 311; D13; D14; D17; D27.

⁴⁹² Tr. p.279, pp.282-290, pp.293-296, pp.299-302, p.305, pp.361-361 (Brieger); D1; D6; D33; P82.

⁴⁹³ Tr. pp.315-316, 317-318, 319-321 (Brieger); D6 at 21; D13; D14 at 3.

⁴⁹⁴ Tr. p.279 (Brieger); P86.

⁴⁹⁵ Tr. pp.294-296 (Brieger); D6 at 3; D33.

⁴⁹⁶ Tr. p.305 (Brieger); D6.

adequately, despite the large volume of tests administered and references that the Student “hated” testing.⁴⁹⁷

197. Regarding the Student’s IQ score, Dr. Brieger opined that Dr. Dupuy improperly substituted a subtest with a low score for a different subtest, explaining that the testing manual and practices allow substitution when a subtest is “spoiled” or incorrectly administered, and there was no indication that the substituted subtest was spoiled.⁴⁹⁸ Dr. Brieger also found that Dr. Dupuy improperly compared the 2023 IQ test (WAIS IV) with a 2022 test that measured the Student’s cognitive abilities (WJ-IV COG), but does not measure IQ.⁴⁹⁹ Dr. Brieger also disagreed with Dr. Dupuy’s conclusion that the Student’s IQ score improved due to the use of stimulant medication, noting that her sub-scores in working memory and processing speed, which would potentially be most sensitive to stimulant medication, remained low.⁵⁰⁰

198. Dr. Brieger further opined that the IEE’s reliability was undermined by the lack of information gathered from interviews of teachers or others who had observed the Student’s strengths and weaknesses, and could make recommendations.⁵⁰¹ Dr. Brieger explained that standardized testing is only one tool in understanding a student’s academic functioning and testing is does not correspond 1-to-1 with the individual’s actual performance in the real world.⁵⁰² As an example, Dr. Brieger pointed to the Student’s later assessments at Gow which reflected that the Student’s test scores “tend to be lower than her daily homework scores.”⁵⁰³

199. Dr. Brieger opined that the SLD of “basic reading” includes a student’s ability to accurately decode and read separate words, the SLD of “reading fluency” includes a student’s ability to decode words correctly at a certain speed with accuracy, and the SLD of “reading comprehension” includes a Student’s understand of what is read.⁵⁰⁴ After considering all the testing in the IEE and the Gow admissions assessments, Dr. Brieger agreed with Dr. Dupuy’s diagnoses that the Student had an SLD in reading.⁵⁰⁵ However, Dr. Brieger opined that the Student had developed phonological awareness, as reflected by average range scores in the July 2023 IEE in both phonological processing and Rapid Autonomic Naming (RAN).⁵⁰⁶ Dr. Brieger noted that the Student

⁴⁹⁷ Tr. pp.284-290 (Brieger); D6 at 3, 4.

⁴⁹⁸ Tr. pp.299-301 (Brieger); D6 at 4.

⁴⁹⁹ Tr. pp.301-302 (Brieger); D6 at 4; D1 at 1.

⁵⁰⁰ Tr. pp.361-362 (Brieger); D6 at 4, 22.

⁵⁰¹ Tr. pp.282-283 (Brieger); D6.

⁵⁰² Tr. p.283 (Brieger).

⁵⁰³ Tr. pp.293-294 (Brieger); P82 at 4.

⁵⁰⁴ Tr. p.352, pp.367-368, p.371-371 (Brieger).

⁵⁰⁵ Tr. pp.317-318 (Brieger); D6 at 21.

⁵⁰⁶ Tr. pp.303-307 (Brieger); D6 at 11.

continued to score the “average” to “high-average” range in RAN when tested in February 2024 at Gow.⁵⁰⁷

200. Dr. Brieger further emphasized that standardized scores measure relative progress as compared to peers in the same classroom.⁵⁰⁸ Dr. Brieger opined that the fact that the Student’s test scores in decoding, sentence reading fluency, passage comprehension, written expression, math computations, and math applications remained relatively the same between 2017, 2022 and 2023, reflected that she did not lose skills or decrease in skills in these areas, although she did not improve faster than her peers.⁵⁰⁹

201. Regarding written expression, Dr. Brieger opined that Dr. Dupuy improperly concluded that the Student had an SLD in written expression.⁵¹⁰ Dr. Brieger noted that while different tests for written language and expression were used on the July 2023 IEE and February 2024 Gow admission testing, the Student’s testing at Gow in written language and expression (7.6 grade equivalent and 75th percentile/“High Average”), were “significantly different and higher” than the Student’s scores on the IEE in written language and expression (5th percentile and 3rd percentile).⁵¹¹

202. Dr. Brieger opined that Dr. Dupuy improperly concluded that the Student had an SLD in math, emphasizing that she performed in the “Low Average” range on math fluency on the July 2023 IEE, which is within the range of average.⁵¹² Dr. Brieger further emphasizing that February 2024 Gow admission testing reflected scores of “Average”, and a 9.5 grade equivalent for math.⁵¹³

203. Dr. Brieger’s opinions are accorded significant weight. While he did not meet the Student or observe the Student in the classroom setting, he reviewed extensive medical and educational records. Further, Dr. Brieger has extensive experience performing special education evaluations of students, and even instructs future teachers in how to conduct education evaluations of students. Dr. Brieger is also a licensed psychologist. Therefore, he understands how to properly conduct education evaluations and related testing and cognitive testing, and to how to review the methodology of these tests and the reliability of their data.

⁵⁰⁷ Tr. pp.306-307 (Brieger); D6 at 10-11; D14 at 1.

⁵⁰⁸ Tr. pp.322-324 (Brieger); D9, p.9.

⁵⁰⁹ Tr. pp.321-322 (Brieger); D9, p.9.

⁵¹⁰ Tr. pp.297-299, 314-315, 317, 319-321 (Brieger); D6 at 17-19, 21; D14 at 3.

⁵¹¹ Id.

⁵¹² Tr. pp.315-316, 320 (Brieger); D6 at 19-20.

⁵¹³ Tr. pp.319-321 (Brieger); D6 at 21; D13; D14 at 3.

Dr. Dupuy

204. Dr. Dupuy was called as an expert witness by the Parent.⁵¹⁴ Dr. Dupuy is not a psychologist, but holds a BS in Chemistry from the University of California, a master's degree in secondary education from Western Washington University, and a Ph.D. in learning disabilities from Northwestern University.⁵¹⁵ Dr. Dupuy does not diagnose ADHD, depression, Autism Spectrum Disorder (ASD) or other mental conditions.⁵¹⁶ She is not certified as either a general education or special education teacher.⁵¹⁷

205. Dr. Dupuy's scope of practice is limited to her training to conduct a band of assessments to diagnose learning disabilities.⁵¹⁸ Dr. Dupuy performs diagnostic evaluations for students and adults with learning differences, such as dyslexia, dysgraphia, and dyscalculia and completes 50-70 assessments a year.⁵¹⁹ She also completes assessments around characteristics of ADHD, although she does not diagnose ADHD.⁵²⁰ Dr. Dupuy has also taken the Orton-Gillingham training program in how to teach the fundamentals of decoding. Dr. Dupuy owns "Explanations, Inc.", a private practice which provides assessment, advocacy and remediation in learning disabilities.⁵²¹

206. Regarding the validity of her testing in the July 2023 IEE, Dr. Dupuy opined that she ensured the validity of Zoom testing by verifying the Student was alone in the room, no other devices were in the room, and she was not disturbed during testing.⁵²² Dr. Dupuy further noted that she watched the Student to ensure that she was not tired and was giving best effort on the tests.⁵²³

207. Dr. Dupuy acknowledged that she calculated the Student's Verbal Comprehension score of 125 (95th percentile) on the WAIS IV using the standard subtest battery (Similarities, Vocabulary, and Information), but substituted the Comprehension subtest in place of the lower score on the Information subtest.⁵²⁴ However, Dr. Dupuy opined that she properly substituted a subtest, explaining that the

⁵¹⁴ Tr. pp.656-657 (Dupuy).

⁵¹⁵ P86; Tr. pp.648-650 (Dupuy); Tr. p.992 (Dupuy).

⁵¹⁶ Id.

⁵¹⁷ Id.

⁵¹⁸ Id.

⁵¹⁹ Id.

⁵²⁰ Id.

⁵²¹ Id.

⁵²² Tr. pp.669-671 (Dupuy).

⁵²³ Tr. pp.667-669 (Dupuy); D6 at 3, 4.

⁵²⁴ D6 at 4.

lower scored subtest was sensitive to the caliber of instruction in general education classroom.⁵²⁵

208. Dr. Dupuy further opined that the Student's 2022 scores on the WJ-IV COG, which estimated the Student's IQ to fall in the Low Average range, significantly underestimated her true ability.⁵²⁶ Dr. Dupuy opined that the Student's current WAIS IV scores reflected the Student's overall intellectual ability was in the Average range, and that this change from her prior cognitive scores was likely due to use of stimulant medication to treat her inattention.⁵²⁷

209. Dr. Dupuy opined that the Student required SDI in writing, emphasizing that the Student's scores on all subtests fell far below average.⁵²⁸ Dr. Dupuy also opined that the Student required SDI in math as testing reflect that she had "significant holes and gaps" in the fundamental skill sets in math, and that she had observed the Student show lack of understanding of material during a class.⁵²⁹ Dr. Dupuy acknowledged that in preparing her 2023 July IEE, she did not interview the Student's teachers, but emphasized that she reviewed the District summaries of the Student's performance.⁵³⁰

210. Dr. Dupuy opined that the SLD of "basic reading" includes a student's ability to accurately decode and read separate words, the SLD of "reading fluency" includes a student's ability to decode words correctly at a certain speed with accuracy, and the SLD of "reading comprehension" includes a Student's understand of what is read.⁵³¹ Dr. Dupuy further opined that UFLI was an inappropriate curriculum for the Student, because it lacks instructional materials geared toward high school students and teachers must create those materials.⁵³² Dr. Dupuy opined that the District's proposal that the Student receive instruction by a teacher not trained in UFLI, who would be supervised by a literacy specialist, was not sufficient because the individual providing direct instruction to the Student should first have adequate training in the tenets of teaching decoding and literacy.⁵³³

211. Dr. Dupuy is not a psychologist, but holds a Ph.D. in learning disabilities from Northwestern University. Therefore, she has the experience and training necessary to review the methodology of the academic testing conducted in her IEE. However, Dr.

⁵²⁵ Tr. pp.716-717 (Dupuy).

⁵²⁶ Id.

⁵²⁷ D6 at 1, 5-6, 22.

⁵²⁸ Tr. pp.718-721; D6 at 18-19.

⁵²⁹ Tr. pp.721-722; D6 at 19.

⁵³⁰ Tr. p.663 (Dupuy).

⁵³¹ Tr. pp.703-704 (Dupuy)

⁵³² Tr. pp.726-727 (Dupuy); Tr. pp.902-904 (Dupuy).

⁵³³ Id.

Dupuy is not certified as either a general education or special education teacher. While she is familiar with the UFLI curriculum, she has not administered the program and no longer teaches decoding. She is not as familiar with UFLI as Dr. Bube, the District literacy specialist who reviewed the program for the District, was available to consult and oversee the instruction to the Student, and was available to train special education teachers implementing the program. Further, while Dr. Dupuy testified she has assisted in drafting IEP goals, there is no evidence that Dr. Dupuy has experience in delivering SDI to special education students. Therefore, her opinions on the appropriateness of the SDI outlined in the Student's IEPs, or the appropriateness of the literacy curriculum offered by the District, are accorded limited weight.

212. Both Dr. Brieger and Dr. Dupuy agree that the Student has an SLD in reading.⁵³⁴ These opinions are supported by the testing of the Student's reading skills contained in both the July 2023 IEE and the February 2024 Gow admission testing.⁵³⁵

CONCLUSIONS OF LAW

Jurisdiction and Burden of Proof

1. The Office of Administrative Hearings (OAH) has jurisdiction over the parties and subject matter of this action for the Superintendent of Public Instruction as authorized by 20 United States Code (USC) §1400 *et seq.*, the Individuals with Disabilities Education Act (IDEA), Chapter 28A.155 RCW, Chapter 34.05 RCW, Chapter 34.12 RCW, and the regulations promulgated under these provisions, including 34 Code of Federal Regulations (CFR) Part 300, and Chapter 392-172A Washington Administrative Code (WAC).

2. The District bears the burden of proof as to most issues in this matter. RCW 28A.155.260(1). In a due process hearing, the burden of proof must be met by a preponderance of the evidence. RCW 28A.155.260(3). Because the Parent seeks reimbursement for a unilateral parental placement, the Parent bears the burden of proof as to the appropriateness of such placement. RCW 28A.155.260(2).^[1] See

⁵³⁴ Tr. pp.317-318 (Brieger); D6 at 21.

⁵³⁵ D6; D14.

[1] RCW 28A.155.260 provides:

(1) Except as provided in subsection (2) of this section, the school district has the burden of proof, including the burden of persuasion and production, whenever it is a party to a due process hearing regarding the identification, evaluation, reevaluation, classification, educational placement, disciplinary action, or provision of a free appropriate public education for a student with a disability.

(2) A parent or person in parental relation seeking tuition reimbursement for a unilateral parental placement has the burden of proof, including the burden of persuasion and production, on the appropriateness of such placement.

(3) The burden of proof in this section must be met by a preponderance of the evidence.

Steadman v. SEC, 450 U.S. 91, 102 (1981); *Thompson v. Dep't of Licensing*, 138 Wn.2d 783, 797 (1999); *Hardee v. Dep't of Social & Health Services*, 172 Wn.2d 1, 4 (2011).

The IDEA and FAPE

3. Under the IDEA, a school district must provide a free and appropriate public education (FAPE) to all eligible children. In doing so, a school district is not required to provide a “potential-maximizing” education, but rather a “basic floor of opportunity.” *Bd. of Educ. of Hendrick Hudson Central Sch. Dist. v. Rowley*, 458 U.S. 176, 197 n.21, 200-201 (1982).

4. In *Rowley*, the U.S. Supreme Court established both a procedural and a substantive test to evaluate a state's compliance with the IDEA. The first question is whether the state has complied with the procedures set forth in the IDEA. The second question is whether the individualized education program developed under these procedures is reasonably calculated to enable the child to receive educational benefits. “If these requirements are met, the State has complied with the obligations imposed by Congress and the courts can require no more.” *Rowley*, 458 U.S. at 206-07.

5. Procedural safeguards are essential under the IDEA, particularly those that protect the parent’s right to be involved in the development of their child’s educational plan. *Amanda J. v. Clark County Sch. Dist.*, 267 F.3d 877, 882 (9th Cir. 2001). Procedural violations of the IDEA amount to a denial of FAPE and warrant a remedy only if they:

- (I) impeded the child’s right to a free appropriate public education;
- (II) significantly impeded the parents’ opportunity to participate in the decision-making process regarding the provision of a free appropriate public education to the parents’ child; or
- (III) caused a deprivation of educational benefits.

20 USC §1415(f)(3)(E)(ii); WAC 392-172A-05105(2); 34 CFR §300.513(a)(2).

6. “To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” *Endrew F. v. Douglas County Sch. Dist. RE-1*, 580 U.S. 386, 137 S. Ct. 988, 999, 197 L. Ed. 2d 335 (2017). The determination as to whether an IEP is reasonably calculated to offer a student FAPE is a fact-specific inquiry. As the

U.S. Supreme Court has made clear, “[a] focus on the particular child is at the core of the IDEA,” and an IEP must meet a child’s unique needs. *Id.* The “essential function of an IEP is to set out a plan for pursuing academic and functional advancement.” *Id.* Accordingly, an IEP team is charged with developing a comprehensive plan that is “tailored to the unique needs of a particular child.” *Id.* at 1000. Additionally, the Student’s “educational program must be appropriately ambitious in light of his circumstances” *Id.*

7. In reviewing an IEP, “the question is whether the IEP is *reasonable*, not whether the court regards it as ideal.” *Endrew*, 580 U.S. at 999 (citing *Rowley*, 458 U.S. at 206-07). The determination of reasonableness is made as of the time the IEP was developed. *Adams v. Oregon*, 195 F.3d 1141, 1149 (9th Cir. 1999). An IEP is “a snapshot, not a retrospective.” *Id.*

8. As set forth in *Van Duyn v. Baker Sch. Dist.*, 502 F.3d 811, 822 (9th Cir. 2007), only material failures to implement an IEP violate the IDEA. Minor discrepancies in the services required by the IEP do not violate the IDEA.⁵³⁶

Issue a. - Whether the District’s November 2023 reevaluation of the Student was appropriate and, if not, whether the Parent and Student are entitled to an IEE at public expense

9. The Parent challenges the appropriateness of the District’s November 2023 reevaluation. For the reasons addressed below, the record shows the reevaluation was appropriate.

Applicable Law

10. Parents have a right to obtain an IEE if they disagree with a school district’s evaluation of their child, under certain circumstances. WAC 392-172A-05005; 34 CFR 300.502(a)(1). An IEE is an evaluation conducted by a qualified examiner who is not employed by the school district, at district expense. WAC 392-172A-05005(1)(c)(i); 34 CFR 300.502(b). If a parent requests an IEE, a district must either ensure that an IEE is provided at no cost to the parent without unnecessary delay or initiate a due process hearing within 15 calendar days to show that the district’s evaluation is appropriate. WAC 392-172A-05005(2)(c).

11. If the district initiates a due process hearing and the final decision is that the district’s evaluation is appropriate, the parent still has the right to obtain an IEE but not at public expense. WAC 392-172A-05005(3).

⁵³⁶ *Id.*

12. Evaluations and reevaluations must comply with the procedures and requirements in WAC 392-172A-03020. These procedures require a school district to provide prior written notice to parents that describes evaluation procedures the district proposes to conduct. WAC 392-172A-03020(1). In conducting the evaluation, a “group of qualified professionals selected by the school district” must use a “variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student, including information provided by the parent ...” WAC 392-172A-03020(2)(a).

13. The group must not use any single measure or assessment as the sole criterion for determining eligibility or educational programming and must use technically sound instruments that may assess the relative contribution of cognitive, behavioral, physical, and developmental factors. WAC 392-172A-03020(2)(b) and (c). School districts must ensure assessments and evaluation materials are selected and administered so as not to be discriminatory on a racial or cultural basis, and are provided and administered in the student’s native language. WAC 392-172A-03020(3)(a); see *also* 34 CFR §300.304.

14. When conducting special education evaluations, districts must ensure that a child is assessed in “all areas related to the suspected disability” including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.” WAC 392-172A-03020(3)(e). The evaluation must be “sufficiently comprehensive to identify all of the student’s special education and related service needs, whether or not commonly linked to the disability category in which the student has been classified.” WAC 392-172A-03020(3)(a)(g). Assessments must also be administered by “trained and knowledgeable personnel” WAC 392-172A-03020(3)(a)(iv); see *also* 34 CFR §300.304(c).

15. Under WAC 392-172A-03025, as part of any evaluation or reevaluation, the team must review existing data on the student, including evaluations and information provided by the parents, current classroom-based, local, or state assessments, classroom-based observations, and observations by teachers and related services providers.

16. Additionally, the district must prepare and provide the parents with an evaluation report. WAC 392-172A-03035. The evaluation report must include, among other things, a statement of whether the student has a disability that meets applicable eligibility criteria, a recommendation as to what special education and related services the student needs, and the date and signature of each professional member of the

group certifying that the evaluation report represents his or her conclusion. WAC 392-172A-03035(a), (d) and (f).

17. However, “a district need not reevaluate a student in every area in which a Parent requests reevaluation.” *L.C. v. Issaquah Sch. Dist.*, 2019 U.S. Dist. LEXIS 77834 *56 (W.D. Wash 2019), *aff’d sub nom. Crofts v. Issaquah Sch. Dist. No. 411*, 2022 U.S. App. LEXIS 907 (9th Cir. 2022). “Rather, the district must review existing evaluation data on the student and, on the basis of that review and input from the parents, identify what additional data, if any, are needed to ensure the child receives a FAPE. WAC 392-172A-03025(2).” *Id.* (internal quotation marks omitted.)

18. In this case, the District’s November 2023 reevaluation was conducted by Ms. Ducheneaux, the school psychologist at Franklin Pierce. Ms. Ducheneaux has bachelor’s degree in psychology and an education specialist degree, which is similar to a master’s degree plus an additional forty-five credits. Ms. Ducheneaux is nationally certified as a school psychologist. The District offered sufficient evidence to establish that Ms. Ducheneaux had the education, training, and experience necessary to conduct the reevaluation.

19. Prior to reevaluating the Student, on October 3, 2023, Ms. Ducheneaux obtained the Parent’s written consent to conduct a reevaluation, focusing on review of existing data and the Student’s academic, medical-physical and general education records. The consent did not include reevaluation of the Student’s social/emotional functioning, which would include executive functioning. The Parent did not request any changes to the scope of the reevaluation. The Parent also provided Ms. Ducheneaux with a release of information form so she could obtain documentation from the Student’s doctors.

20. The District sent the notice in the form of a reevaluation notification/consent form. There is no procedural defect in the notice, and it did not undermine the appropriateness of the District’s reevaluation.

21. The District established that it used a variety of assessment tools and strategies to gather relevant information about the Student. Dr. Ducheneaux reviewed the Student’s 2017 cognitive testing, 2017 social-emotional testing, and academic testing from 2017 and 2022. She reviewed the Student’s grades and prior IEPs, and gathered current teacher input. Ms. Ducheneaux reviewed medical progress notes for June 21, 2023, and July 17, 2023.

22. Ms. Ducheneaux reviewed the testing results contained in Dr. Dupuy’s July 2023 IEE. The assessments were administered in English, the Student’s native language. There were no concerns that assessments administered as part of the

reevaluation discriminated against students of the Student's racial and cultural background.

23. Ms. Ducheneaux did not conduct any additional testing, as Dr. Dupuy had recommended the Student not undergo more testing after her extensive IEE. The District's reevaluation also included a review of existing data, including the February 2022 reevaluation, her IEPs and progress reports, school assessments and grades, and medical records.

24. The November 2023 reevaluation did not address the Student's social/emotional functioning, which would include an evaluation of her executive functioning. Ms. Ducheneaux reviewed a medical progress note for June 21, 2023, which contained an ADHD diagnosis for the Student, and a progress note from July 17, 2023, which reflected that the Student was prescribed methylphenidate medication for ADHD.

25. However, Ms. Ducheneaux noted Dr. Dupuy's July 2023 IEE indicated that the Student was medicated at the time of testing and that the Student's executive functioning scores "do not suggest that [Student] has a disorder characterized by attention deficits, such as ADHD." Ms. Ducheneaux further noted that November 2023 IEP progress reports reflected that the Student's strengths included perseverance and helping those around her while staying on track with her own assignments, and that the Student's teachers expressed few concerns with her organization/behavior/study skills.

26. Based on Ms. Ducheneaux's review of existing data and records, her November 2023 reevaluation concluded that the Student continued to qualify for special education services as a student with an SLD, and recommended SDI in the areas of basic reading, reading comprehension, and math calculation.

27. After receiving and reviewing Dr. Dupuy's December 2023 dissent, Ms. Ducheneaux added the Student's oral language and processing scores to the reevaluation, and amended the reevaluation to recommend that the Student receive services in written expression. The reevaluation's PWN specified that the District was proposing that the Student continue to qualify for special education services effective November 21, 2023. However, Ms. Ducheneaux did not finalize the terms of the reassessment until she reviewed Dr. Dupuy's December 2023 dissent. The PWN stated that the reevaluation rejected including SDI in the area of executive functioning, noting that teachers reported that the Student was not struggling with organization and planning and the Student was completed most if not all of her work.

28. Finally, the District prepared a reevaluation report that satisfied the requirements of WAC 392-172A-03035. The report contained extensive information for each area that was evaluated. It concluded that the Student met eligibility criteria for special education services under an SLD. The report discussed the July 2023 IEE assessments, the Student's past assessments and other data used to support this conclusion. The reevaluation meeting was held remotely, and neither the Parent nor Dr. Dupuy signed the reevaluation. However, any procedural defect based on the lack of signatures does not impact the overall appropriateness of the evaluation or result in a denial of FAPE. WAC 392-172A-05105(2).

29. The Parent contends that the District's reevaluation is inappropriate because the District failed to formally assess the Student in the area of executive functioning, as it was a known or suspected area of disability. This argument is not supported by the evidence. While the Student was diagnosed with ADHD and received medication sometime between June and July 2023, the Student did not exhibit executive functioning issues in the classroom when reassessed in November 2023. Further, Dr. Dupuy's July 2023 IEE stated that testing did not suggest the Student had a disorder characterized by attention deficits, such as ADHD.

30. It is concluded that the District's reevaluation assessed the Student in all areas of suspected disability. The Parent consented to a reevaluation of the Student and the District advised the Parent of the specific assessments the District planned to administer in each area. Although the Parent now assert the need for a formal assessment of the Student's executive functioning, the evidence in the record does not support their argument.

31. In conclusion, the evidence in the record demonstrates that the reevaluation was appropriate. It was sufficiently comprehensive to identify the Student's special education and related services needs, and met the other requirements of the IDEA. The District has met its burden to prove this claim.

Issue b(i) - Whether, from April 5, 2022, through December 11, 2023,⁵³⁷ the District failed to adequately evaluate the Student's disability-related needs in the areas of reading, written expression, math and organization/behavior/study skills

32. The Parent asserts that the District failed to evaluate the Student's disability needs in the areas of reading, written expression, math and organization/behavior/study skills. For the reasons addressed below, it is concluded

⁵³⁷ The Parent identifies the time frame in their closing brief as April 5, 2022, through February 6, 2024. However, the July 1, 2024, Order of Consolidation and Setting Issues for Hearing identifies the time frame for this issue as April 5, 2022 through December 11, 2023. The Parent did not object to the Order of Consolidation.

that the record shows the District properly evaluated the Student's disability related needs in these areas from April 5, 2022 through December 11, 2023.

Applicable Law

33. A reevaluation must be conducted at least every three years unless the parent and the district agree that a reevaluation is unnecessary. WAC 392-172A-03015(2)(b); 34 CFR §300.303(b)(2). A reevaluation must also be conducted if a district determines that the educational or related services needs, including improved academic achievement and functional performance, of the student warrant a reevaluation or if the child's parent or teacher requests a reevaluation. WAC 392-172A-03015(1); 34 CFR §300.303(a)(1)-(2).

34. A district need not evaluate in areas in which it does not suspect a disability. Whether a school district had reason to suspect that a child might have a disability must be evaluated in light of the information the district knew, or had reason to know, at the relevant time, not "exclusively in hindsight." *Adams v. State of Oregon*, 195 F.3d 1141, 1149 (9th Cir. 1999) (quoting *Fuhrmann v. East Hanover Bd. of Educ.*, 993 F.2d 1031, 1041 (3d Cir. 1993)). Once a district is on notice of a potential disability, it is obligated to evaluate. See, e.g., *N.B. Hellgate Elementary Sch. Dist., ex rel. Bd. of Directors, Missoula Cnty., Mont.*, 541 F.3d 1202 (9th Cir. 2008).

35. According to the U.S. Court of Appeals for the Ninth Circuit, a disability is "suspected" and must be assessed by a school district when the district has notice that the student at issue has displayed symptoms of that disability. *Timothy O. v. Paso Robles Unified Sch. Dist.*, 822 F.3d 1105, 1119-20 (9th Cir. 2016). See *J.K. v. Missoula Cnty. Pub. Sch.*, 713 F. App'x 666, 667 (9th Cir. 2018) ("The duty to evaluate a student arises when disability is 'suspected,' or 'when the district has notice that the child has displayed symptoms of that disability'"). A district cannot circumvent its obligation to assess a student for a disability by relying solely on informal observations. *Timothy O.*, 822 F.3d at 1119-20.

36. The record reflects that the Student received a triennial reevaluation on February 1, 2022. Another reevaluation was not due until February 1, 2025. Nevertheless, the Parent argues that the District was on notice of the Student's potential disabilities in reading, math, written expression and organization/behavior/study skills, during the 2021-2022, 2022-2023 and 2023-2024 school years, and thus was required to evaluate the Student in these areas.

37. The undersigned notes that the two-year statute of limitations applies to the development of the February 2022 IEP. WAC 392-172A-05080(2). The Washington

regulation is substantially similar to the statute of limitations in the IDEA. See 20 USC §1415(b)(6)(B) and §1415(f)(3)(C); 34 CFR §300.507. The Parent filed their request for hearing on April 5, 2024. Therefore, the reasonableness of the February 1, 2022 IEP is not at issue in this case. See, *Adams v. State of Oregon*, 195 F.3d 1141, 1149 (9th Cir. 1999) (The determination of reasonableness is made as of the time the IEP was developed. An IEP is “a snapshot, not a retrospective.”).

38. Thus, the undersigned will examine the record solely to determine whether the District had notice, based on the information the District knew at the time, that the Student had additional areas of disability which required evaluation. The record reflects that prior to the July 2023 IEE, the District had no reason to suspect the Student had an additional disability in reading not reflected in her February 2022 or February 2023 IEPs, or a disability in math, written expression, or organization/behavior/study skills.

2021-2022 School Year

39. The February 2022 reevaluation reflected that the Student scored “Average” to “Low Average” in reading comprehension and written expression, and “Average” in the broad math composite and math concepts and applications. Teacher reports did not indicate any the Student experienced any executive functioning difficulties. Based on the February 2022 reevaluation, the District had no reason to suspect the Student had any disabilities in math, written expression or organization/behavior/study skills.

40. The District properly recognized that testing reflected that reading fluency and decoding were an area of particular weakness for the Student. A February 2022 IEP was developed with a single goal in Basic Reading to develop the skill of fluency. As outlined above, a two-year statute of limitations applies to the development of the February 2022 IEP. WAC 392-172A-05080(2).

41. The Student passed all classes during second semester of the 2022-2023 school year. Neither the April 2022 nor the June 2022 IEP progress reports indicated that the Student experienced additional areas of disability in reading, math, written expression or organization/behavior/study skills. Finally, academic subtest scores reflect that the Student maintained relative progress as compared to her peers between 2017, 2022 and 2023 in decoding, reading fluency, written expression and math.

42. Taken together, the Student’s passing grades in all classes, IEP progress reports, and test results between implementation of the February 2022 IEP and the end of the 2022-2023 school year, did not indicate the Student had an additional

disability in reading, math, written expression, or organization/behavior/study skills. Therefore, the District has met its burden to prove that it had no notice of any additional suspected disabilities requiring evaluation, and did not fail to adequately evaluate her in these areas.

2022-2023 School Year

43. In August 2022, the Parent requested, and the District approved, funding for a comprehensive IEE. However, the IEE was not completed until July 2023. Therefore, the parties proceeded with the annual IEP review in February 2023.

44. An IEP progress report for November 16, 2022, mentioned no difficulties in reading, math, written expression or organization/behavior/study skills. The Student passed all classes during first semester of the 2022-2023 school year,

45. On February 1, 2023, the Student's IEP team met for an IEP review. IEP progress notes reflected that the Student was meeting classroom standards in her classes that called for basic reading skills, and turning in high quality work. The Student had had 19-20 missing assignments in Algebra II, and was distracted by her phone, but had been successful during the semester. An IEP was developed for the Student for the period of February 6, 2023 through February 6, 2024 (February 2023 IEP). The February 2023 IEP again contained a single goal in basic reading, this time focusing on vocabulary and comprehension.

46. As of April 2023, the Student had been diagnosed with ADHD and prescribed medication. However, none of the Student's teachers were aware of the diagnosis, or aware that the Student was taking medication. Further, none of the IEP progress reports noted any concerns with organization/behavior/study skills. On May 25, 2023, the Student's Algebra II teacher emailed the Parent to report that the Student had recently been on her phone during class rather than working on assignments, and had not done well on her last test. The Student thereafter failed Algebra II during second semester, but passed the rest of her classes.

47. A single failing grade was insufficient to give the District notice that the Student had a suspected disability in math. As outlined above, between 2017 and 2023, academic subtest scores reflect that the Student maintained relative progress as compared to her peers in decoding, reading fluency, written expression, and math applications.

48. Taken together, the Student's grades, IEP progress reports, and test results between implementation of the February 2022 IEP and the end of the 2022-2023

school year did not indicate the Student had an additional disability in reading, or a disability in math, written expression, or organization/behavior/study skills. Therefore, it is concluded that the District has met its burden to prove that it did not fail to adequately evaluate the Student in math, written expression, or organization/behavior/study skills. The District has met its burden to defend this claim.

2023-2024 School Year

49. As outlined above, the IEE was completed in July 2023. Dr. Dupuy diagnosed the Student with learning disabilities in reading, dyslexia, written language, dysgraphia, and math. CPT-3 testing in the IEE indicated that the Student's scores "do not suggest that [Student] has a disorder characterized by attention deficits, such as ADHD."

50. On October 3, 2023, the District obtained the Parent's consent to conduct an early reevaluation of the Student. At the recommendation of Dr. Dupuy, the reevaluation did not include additional testing for the Student, but instead focused on the IEE testing, review of existing records, and current progress. The reevaluation was completed on November 3, 2023. The reevaluation agreed with the July 2023 IEE, that the Student had learning disabilities in reading, dyslexia, written language, dysgraphia, and math. The District disagreed with the July 2023 IEE about the Student's organization/behavior/study skills, but did so based on an appropriate reevaluation that included review of medical records, testing contained in the IEE, and teacher input.

51. It is concluded that, prior to receiving the July 2023 IEE, the District had no notice of additional disabilities in reading, math, written expression, or organization/behavior/study skills. Further, after receiving the July 2023 IEE, the District immediately began to assess the Student for these potential disabilities. Therefore, the District did not fail to adequately evaluate the Student in these areas.

52. Based on the record, from April 5, 2022, through December 11, 2023, it is concluded that the District has met its burden to prove it adequately evaluated the Student's disability-related needs in the areas of reading, math, written expression, and organizational/behavior/study skills. The District has met its burden to defend this claim.

Issue b(ii) - Whether the District denied the Student special designed instruction (SDI) in math, written expression, and organization/behavior/study skills in all IEPs from April 5, 2022, through February 5, 2024

53. The Parent next argues that the District inappropriately denied the Student SDI in math, written expression, and organization/behavior/study skills between February 2, 2022 and February 5, 2024. This argument fails because, as outlined above, the District had no notice of these suspected disabilities until July 2023, and therefore had no duty to provide SDI in these areas. Further, after receiving notice of suspected disabilities in math and written expression, the District reassessed the Student and provided SDI in math and written expression in both the draft December 2023 IEP and the final January 2024 IEP.

Applicable Law

54. The Ninth Circuit employs the "snapshot" rule to determine the appropriateness of a student's eligibility for SDI on the basis of the information reasonably available to the parties at the time of the IEP formation. *L.J. v. Pittsburg Unified Sch. Dist.*, 850 F.3d 996, 1004 (9th Cir. 2016). "An IEP must take into account what was and was not, objectively reasonable when the snapshot was taken." *Id.* Courts judge the eligibility decision for SDI on the basis of whether the IEP took the relevant information into account, not on whether or not it worked. *Id.*

55. In this case, the District had no knowledge of the Student's potential disabilities in math or written expression until it received the July 2023 IEE. Further, after receiving notice of these suspected disabilities, the District evaluated the Student on November 3, 2023. The District's reevaluation agreed with the July 2023 IEE that the Student had learning disabilities in reading, dyslexia, written language, dysgraphia, and math, and recommended SDI in these areas.

56. The District also had no knowledge of the Student's potential disabilities in organization/behavior/study skills until it received the July 2023 IEE. The District's November 2023 reevaluation did not assess the Student's executive functioning or organization/behavior/study skills. However, the reevaluation included review of medical records, testing contained in the IEE, and teacher input, all of which indicated that the Student did not have a disability in executive functioning or organization/behavior/study skills. As outlined above, the District did not fail to adequately evaluate the Student in this area. Therefore, the District was not required to provide SDI in this area.

57. On December 12, 2023, the District sent the Parent a draft IEP outlining SDI in the following areas: Basic Reading (Decoding), Basic Reading (Fluency), Reading Comprehension (Comprehension), Written Expression (Spelling and Grammar), and Math Calculation (Multi-digit Computation), Math Calculation (Solving Practical Word

Problems). The District then sent the Parent's a final draft IEP on Friday, January 26, 2024 both prior to the IEP triennial review deadline of February 1, 2025.

58. The District properly reevaluated the Student in November 2023, and developed a December 2023 IEP, and a final January 2024 IEP, offering SDI in the qualifying areas of math and written expression. Therefore, it is concluded that the District did not deny the Student a FAPE by failing to provide SDI to the Student in math, written expression and organization/behavior/study skills in IEPs between April 5, 2022 through February 5, 2024. The District has met its burden to defend this claim.

Issue b(iii) - Whether from April 5, 2022, to the present, the District failed to identify the Student as eligible for SDI in the area of reading fluency

59. The Parent next argues that from April 5, 2022, to the present, the District failed to identify the Student as eligible for SDI in reading fluency.

60. As outlined above, the two-year statute of limitations applies to the development of the February 2022 IEP. Therefore, the Parent cannot challenge whether the February 2022 IEP identified the Student as eligible for SDI in reading fluency. Nevertheless, the record reflects that the District's February 2022 IEP identified the student as eligible for SDI in reading fluency. Further, the record reflects that both the District's draft December 2023 IEP, and final January 2024 IEP, identified the Student as eligible to receive SDI in basic reading focused on the skill of reading fluency.

61. However, for the reasons set forth below, the record reflects that the District failed to identify the Student as eligible to receive SDI in reading fluency in the February 2023 IEP. The District did not thereafter include SDI in reading fluency until the December 2023 draft IEP and the January 2024 final IEP.

Applicable Law

62. Basic reading, reading fluency, and reading comprehension are separate areas of qualifying SLD. WAC 392-172A-03055.

2021-2022 School Year

63. In the present case, both the District's expert witness, Dr. Brieger, and the Parent's expert witness, Dr. Dupuy, agree that the SLD of "basic reading" includes a student's ability to accurately decode and read separate words, the SLD of "reading fluency" includes a student's ability to decode words correctly at a certain speed with

accuracy, and the SLD of “reading comprehension” includes a Student’s ability to understand of what is read.

64. In the District’s February 2022 reevaluation, the Student scored “Low” in decoding fluency, word recognition fluency, reading fluency, and the “Low” on the overall basic reading skills composite. The Student also scored “Below Average” in reading and silent reading. The February 2022 reevaluation indicated that the Student’s testing results showed that reading decoding and fluency were an area of particular weakness, and that SDI was recommended in basic reading skills to address these needs.

65. The IEP team concluded that the Student’s SDI needs could be met by focusing on the goal of basic reading, with reading fluency nested as a subset of the basic reading goal. A February 2022 IEP was developed which contained a single goal in basic reading to develop the skill of fluency, for period of February 11, 2022 through February 11, 2023.

66. Based on the above, it is concluded that the District did not fail to identify the Student as eligible for SDI in reading fluency between April 5, 2022 and the formation of her next IEP in February 2023. The District has met its burden to defend this claim.

2022-2023 School Year

67. On February 1, 2023, the Student’s IEP team met for an IEP review. A February 2023 IEP was developed for the Student for the period of February 6, 2023 through February 6, 2024. The February 2023 IEP did not include any goals in reading fluency. Rather, the February 2023 IEP included a single basic reading goal to improve basic reading skills in “vocabulary and comprehension.”

68. Despite the fact that the February 2022 IEP reevaluation indicated the Student had difficulty in both reading fluency and decoding, and recommended SDI in basic reading skills to address these needs, there is no indication in the record that the Student’s reading fluency had improved sufficiently to no longer require SDI. The District did not conduct additional testing to address the Student’s progress in reading fluency. The February 2023 IEP did not explain why reading fluency was no longer included in the goals. The February 2023 IEP further noted that the Student did not pass the SBA in ELA in 2022, scoring a level 2 (did not meet standards).

69. In sum, nothing in the record supports the District’s decision to drop reading fluency as a skill to be addressed by SDI. It is concluded that between February 6, 2023 and December 2023, when a new IEP was created, the District failed to provide

the Student with SDI in reading fluency, thus denying the Student a FAPE. Therefore, the District has failed to meet its burden on this issue.

2023-2024 School Year

70. As outlined above, the IEE was completed in July 2023. Dr. Dupuy diagnosed the Student with learning disabilities in reading (Reading Disorder), and dyslexia (phonological and orthographic subtypes). The District completed a reevaluation on November 3, 2023, and agreed with the July 2023 IEE that the Student had learning disabilities in reading and dyslexia. The reevaluation also recommended SDI in the areas of basic reading, including reading fluency. The District created a draft IEP on December 12, 2023, and a final IEP on January 26, 2024, both of which provided SDI in basic reading fluency.

71. Therefore, it is concluded that as of December 12, 2023, the District had identified the Student as eligible for SDI in the area of reading fluency and included SDI addressing reading fluency in her annual IEP. Therefore, the District has met its burden to defend this claim.

Provision of appropriate SDI and sufficient SDI minutes

72. The next issues raised by the Parent concern the appropriateness of and sufficiency of the SDI minutes provided in the Student's IEPs. The Parent argues that from April 5, 2022, to the present the District failed to provide sufficient and/or appropriate SDI in the areas of reading fluency and basic reading in all IEPs. The Parent further argues that from December 11, 2023 to the present, the District failed to provide sufficient or appropriate SDI in the areas of reading comprehension and written expression in all IEPs.

73. As outlined above, the two-year statute of limitations applies to the development of the February 2022 IEP. Therefore, the Parent cannot challenge the sufficiency of the SDI minutes provided in the February 2022 IEP. The record also reflects that in both the draft December 2023 IEP and final January 2024 IEP, the District provided both appropriate SDI and sufficient SDI minutes in reading comprehension, written expression, basic reading and reading fluency. Therefore, the District has met its burden on these issues.

74. However, for the reasons addressed below, the record shows that the District failed to provide appropriate SDI and sufficient SDI minutes in the February 2023 IEP the areas of, basic reading, reading fluency, reading comprehension, and written expression.

Applicable Law

75. As set forth above, a school district must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of his circumstances.” *Endrew F.*, 580 U.S. at 399. The IDEA “cannot and does not promise any particular educational outcome.” *Id.* at 398 (citations omitted). The IEP must also provide for the student to be in the regular classroom “whenever possible.” *Id.* at 401 (quoting *Rowley*, 458 U.S. at 202).

76. An IEP must contain a statement of a student’s present levels of academic and functional performance, including how the child’s disability affects the child’s involvement and progress in the general education curriculum. WAC 392-172A-03090(1)(a); 34 § CFR 300.320(a)(1). Present levels must include baseline measurements for goals. *Northshore Sch. Dist.*, 114 LRP 2927 (SEA WA 2013). (17-109).

77. An IEP must also contain a statement of annual goals, including academic and functional goals, designed to meet the student’s needs that result from his disability to enable him to be involved in and make progress in the general education curriculum and meet each of the other educational needs that result from the student’s disability. WAC 392-172A-03090(1)(b)(i); 34 § CFR 300.320(a)(2).

78. The IDEA does not specify the number of goals that must be included in an IEP, but there should typically be at least one goal for each area of need. See, e.g., *Bellflower Unified Sch. Dist.*, 54 IDELR 66 (SEA CA 2010) (IEP deficient because it did not contain goals to address student’s deficits in attending to group instruction); *Flagstaff Arts and Leadership Academy*, 113 LRP 27180 (SEA AZ 2013) (IEP deficient because it failed to provide goals to properly address basic reading, reading fluency, life skills, and other areas of need).

79. An IEP need not contain every goal requested by a parent or recommended by the parent’s experts. See, *G.D. v. Torrance Unified Sch. Dist.*, 112 LRP 12078 (C.D. Cal. 2012) (IEP goals not inappropriate where the district included goals addressing the student’s significant needs while excluding those it deemed unnecessary or not age appropriate).

80. Finally, the IDEA requires IEP goals to be “measurable.” *R.P. ex rel. C.P. v. Prescott Unified Sch. Dist.*, 631 F.3d 1117, 1122 (9th Cir. 2011) (citing 20 U.S.C. § 1414(d)(1)(A)(i)(II)). However, there is no specific form of measurement required by statute of caselaw. *Prescott Unified Sch. Dist.*, at 1122-1123. Goals can be measured

in a number of subjective ways as well as quantitatively. *Capistrano Unified Sch. Dist. v. S.W.*, 21 F.4th 1125, 1134-1135 (9th Cir 2021).

Issues b(iv) – (b)(vii) – Whether from April 5, 2022, to the present, the District failed to provide sufficient SDI minutes in the Student’s IEPs, and failed to provide appropriate SDI, in the areas of basic reading and reading fluency

2021-2022 School Year

81. The Parent contends that the February 2022 IEP failed to provide specific measurable goals or sufficient SDI minutes to address the Student’s needs in reading fluency and decoding,⁵³⁸ and failed to adequately serve the Student because it failed to properly differentiate between these categories of need.

82. The February 2022 IEP contained a single goal in basic reading to develop the skill of fluency, and provided the Student with 200 minutes of SDI per month in reading fluency. The basic reading goal specified that by February 10, 2023, when given the task to read an unfamiliar instructional level literary or information text for 1 minute, the Student would read aloud improving her reading fluency from 79 WCPM with 85% accuracy to greater than 87 WCPM with 95% accuracy using Goalbook fluency extract at grade level. The February 2022 IEP did not include any SDI in decoding.

83. The two-year statute of limitations bars the Parent from challenging the appropriateness of the February 2022 IEP goal, or the sufficiency of the SDI minutes provided to meet this goal. Therefore, the District has met its burden to defend this claim.

2022-2023 School Year

84. On February 1, 2023, the District developed a new IEP. The February 2023 IEP provided the Student 200 minutes of SDI per month in basic reading, provided by a special education teacher and monitored by a special education teacher, within the general education setting. The February 2023 IEP also contained a single “basic reading” goal focused on vocabulary and reading comprehension goals.

85. As outlined above, the February 2023 IEP goal in vocabulary and reading comprehension is not supported by data. As of February 2023, there was no indication that the Student was having any difficulty in vocabulary and reading comprehension.

⁵³⁸ Both the District’s and Parent’s expert witnesses agree that the SLD of “basic reading” includes a student’s ability to accurately decode and read separate words, and the SLD of “reading fluency” includes a student’s ability to decode words correctly at a certain speed with accuracy.

There was no relationship between the Student's levels of performance and the February 2023 IEP goals and objectives, in that the Student scored "Average" in reading comprehension in the February 2022 reevaluation and it did not recommend SDI in reading comprehension.

86. There was also no data to support the District's change in goal from fluency to comprehension. The District did not conduct any follow up testing in reading fluency, or explain why it dropped SDI in fluency and instead added SDI vocabulary and reading comprehension. The Student did not pass ELA tests in either spring 2022 or spring 2023, but the District did not specify whether her scores were based on reading fluency, reading comprehension or some other ELA standard.

87. It is concluded that the February 2023 IEP goal was not reasonably calculated to allow the Student to make progress in light of her known weaknesses in reading fluency. The District has failed to provide data supporting its conclusion that as of February 2023, the Student no longer required SDI in fluency, and instead required SDI in reading comprehension. Because the District provided no SDI in fluency in the February 2023 IEP, it failed to meet its burden to show that it provided appropriate SDI or sufficient SDI minutes in fluency.

88. Similarly, the February 2022 reassessment reflected that reading fluency and decoding were an area of particular weakness for the Student, and recommended SDI in basic reading skills to address these needs. While the Parent cannot challenge the District's failure to include SDI in basic reading in the area of decoding in the February 2022 IEP, there is also no indication that the Student's decoding skills had improved sufficiently as of February 2023, such that she no longer require SDI in this area. Because the District provided no SDI in decoding in the February 2023 IEP, the District has failed to meet its burden to show it provided either appropriate SDI or sufficient SDI minutes in decoding.

2023-2024 School Year

89. Dr. Dupuy's IEE was completed in July 2023. The District thereafter completed a reevaluation on November 3, 2023, and recommended SDI in the areas of basic reading, reading comprehension, and math calculation. Both the December 2023 draft IEP and the January 2023 final IEP included separate annual goals in basic reading (decoding) and basic reading (fluency). These goals were appropriate and measurable.

90. The decoding goal in the December 2023 draft IEP relied on adapted "grade-level" text. The District changed this goal in the January 2024 IEP to an "8th grade" text. This change was based on the highest grade level of progress monitoring passages available to the District, and reflected same literacy level Dr. Dupuy

recommended for reading comprehension. The December 2023 draft IEP offered an appropriate decoding goal at the Student's grade level, as she was enrolled in Senior level ELA class. However, the January 2024 IEP also provided an appropriate decoding goal as it more closely aligned with Dr. Dupuy's recommendations and available progress monitoring materials.

91. The reading fluency goal in the December 2023 draft IEP focused on "unfamiliar instructional level" text. The District changed this in the January 2024 IEP to an 8th grade" text. This change was based on the highest grade level of progress monitoring passages available to the District, and reflected same literacy level Dr. Dupuy recommended for reading comprehension. While the December 2023 draft IEP did not provide a specific instructional level, this did not deny the Student a FAPE. The District clarified the instructional level in the January 2024 IEP, and provided an appropriate reading fluency goal more closely aligned with Dr. Dupuy's recommendations and available progress monitoring materials.

92. Both the December 2023 draft IEP and the January 2024 IEP also included appropriate methods to measure the Student's decoding and fluency progress. The decoding goal required the Student to improve decoding skills from 60% accuracy to 80% accuracy for 4 out of 5 adapted, grade level texts. The fluency goal required the Student to improve her fluency from 79 WCPM with 85% accuracy to 150 WCPM with 95% accuracy on 3 out of 4 opportunities. The Student was given one year to meet these goals. Thus, the goals included a baseline and targets sufficient to determine whether the Student was making progress toward the goals.

93. Both the December 2023 draft IEP and the January 2024 IEP included 300 minutes per month of shared SDI for both basic reading (decoding) and basic reading (fluency) goals. This averages to 15 minutes per day or, on an A-B schedule, 30 minutes per alternating day. While the Parent argues that the Student should receive a minimum of 60 minutes per day in decoding, and another 80-90 minutes per day in reading fluency, the evidence does not support the conclusion that the Student required this large amount of daily SDI to make measurable progress in decoding and reading fluency. Spending 1 ½ hours per day on decoding and fluency is excessive where the Student is passing her ELA classes.

94. Finally, the Parent argues that the UFLI structured literacy instruction offered by the District in the December 2023 draft IEP and January 2024 final IEP is inappropriate. The Parent has no discretion to determine the appropriateness of the literacy curriculum offered by the District. However, for the reasons set forth below, it is concluded that the curriculum was reasonably calculated to provide the Student with an educational benefit.

95. The reasoning of the court in *Prescott* is instructive. In that case, the parents argued that the district failed to base its IEP on peer-reviewed research, and that the teachers would "pick and choose the techniques [they] liked," rather than utilize "best practices" that have been demonstrated to be effective. *Prescott*, 631 F.3d at 1122. The court in *Prescott* disagreed, noting that the IDEA accords educators discretion to select from various methods for meeting the individualized needs of a student, provided those practices are reasonably calculated to provide him with educational benefit. *Id.* (citing *Adams*, 195 F.3d at 1149-50; *Deal v. Hamilton Cnty. Bd. of Educ.*, 392 F.3d 840, 861-62 (6th Cir. 2004)).

96. As outlined above, the District chose UFLI as an appropriate curriculum. Similar to Orton-Gillingham, UFLI is an explicit, systematic phonics program, which starts with simple phonemes then builds to the more complex sounds and phonemes. While the UFLI curriculum was developed both as a core curriculum for Kindergarten through second graders, it is also used as an intervention for students who have not yet mastered skills typically taught in these grades. A teacher without any experience in providing literacy instruction could implement the UFLI program with appropriate support, such as coaching, modeling and providing feedback.

97. In sum, the use of the UFLI literacy curriculum with the Student, along with collaborative support and planning from the District literacy specialist, was an appropriate course of action at the time the December 2023 draft IEP and January 2024 final IEP were developed.

98. An IEP does not need to be perfect. It must simply be "reasonably calculated" to enable a child to make progress appropriate in light of his or circumstances. It is concluded that the December 2023 draft IEP and the January 2024 final IEP were reasonably calculated to allow the Student to make progress in light of her difficulties in decoding and reading fluency. It is concluded that these IEPs provided both reasonable SDI and sufficient SDI minutes in basic reading (decoding) and basic reading (fluency). Therefore, the District has met its burden on this issue.

Issues b(viii) and b(ix) – Whether from December 11, 2023, to the present, the District failed to provide sufficient SDI minutes, and appropriate SDI, in the area of reading comprehension

99. The record reflects that both the December 2023 draft IEP, and the January 2024 IEP, contained SDI in reading comprehension. Both IEPs noted that the Student performed below average in reading comprehension, and that she answered only 60% of literal questions correctly and 72% of inferential questions correctly.

100. Both the December 2023 IEP and January 2024 IEPs contained a reading comprehension goal emphasizing the skill of comprehension. The December 2023 IEP specified that by December 17, 2024, when given a short passage to read the Student would answer a series of related open-ended and multiple questions improving her reading comprehension from 60% correct literal questions and 72 inferential questions to 70% correct literal questions and 82% inferential questions 3 out of 4 opportunities as measured by bi-weekly progress monitoring. The January 2023 IEP changed the annual goal to February 4, 2025, and, at Dr. Dupuy's recommendation, specified that the passage would be at an 8th grade level. Both IEPs provided 200 SDI minutes per month in reading comprehension, to be provided by a special education teacher/paraeducator

101. The Parent argues that it was not clear whether this goal measured reading comprehension, because the Student's accommodations included text-to-speech and reduced assignments based on amount of reading required. The Parent further argues that the reading comprehension goal was overly ambitious because it was based on 8th grade text passages, which the Student lacked the decoding and reading fluency skills to access. The Parent also argues that the 200 SDI minutes per month in reading comprehension was insufficient, as Dr. Dupuy opined that the Student required 30–40 minutes per day in SDI in reading comprehension.

102. I conclude that the December 2023 IEP offered SDI in reading comprehension reasonably calculated to enable the Student to make progress appropriate in light of her circumstances. The December 2023 IEP was sufficient to reflect the Student's present levels of performance, and the goals were drafted to improve her reading comprehension in answering both literal questions and inferential questions. The goals were understandable and measurable, and based on the 8th grade level recommended by Dr. Dupuy. The goals included a baseline and targets sufficient to determine the Student was making progress toward the goals and objectives.

103. I also conclude that 200 minutes per month was sufficient SDI to meet the outlined goals in reading comprehension and to provide bi-weekly progress monitoring. While Dr. Dupuy recommended 30-40 minutes of SDI per day in reading comprehension, the evidence does not support the conclusion that the Student required this amount of daily SDI to make measurable progress in reading comprehension. While Dr. Dupuy's July 2023 IEE, reflected that the Student tested at the 5th grade level in reading comprehension, Gow admission testing in February 2024 reflected that the Student scored a 7.6 grade level in reading comprehension. This supports a conclusion that the Student could make measurable progress in reading comprehension with the 200 minutes of SDI per month allocated by the District.

104. It is concluded that both the December 2023 draft IEP and the January 2024 IEP provided appropriate SDI and sufficient SDI minutes in reading comprehension. IT is further concluded that any delay in the District implementing the January 2024 IEP was reasonable. Therefore, the District has met its burden on these issues.

Issues b(x) and b(xi) – Whether from December 11, 2023, to the present, the District failed to provide appropriate SDI, and sufficient SDI minutes, in the area of written expression

105. The record reflects that both the December 2023 draft IEP, and the January 2024 IEP, contained SDI in written expression. Both IEPs noted that the Student performed below average in written language and spelling, and struggled in the area of passage production which incorporates mechanics, grammar, cohesion, and coherence.

106. Both the December 2023 draft IEP and January 2024 IEP contained a Written Expression goal emphasizing the skills of spelling and grammar. The December 2023 draft IEP specified that by December 17, 2024, the Student would write a 5 paragraph essay using at least 2 resources to verify and correct spelling, improving written expression skills from writing a multi-paragraph essay of 25 words with 10% error rate to writing a multi-paragraph essay of 750 words with a 5% error rate or less, as measured by bi-weekly progress monitoring writing assignments. The January 2023 IEP changed the annual goal to February 4, 2025. Both IEPs provided 160 SDI minutes per month in written expression, to be provided by a special education teacher/paraeducator.

107. The Parent argues that the December 2023 IEP failed to provide appropriate goals in the area of written expression. The Parent argues that the written expression goal was overly ambitious, complex, and vague because the inclusion of many different component skills made it impossible to track each skill or design adequate SDI based on the undefined measure of “error rate.” The Parent also argues that the 160 SDI minutes per month in written expression was insufficient, as Dr. Dupuy opined that the Student required 60 minutes per day in SDI in written expression.

108. I conclude that the December 2023 IEP offered SDI in written expression reasonably calculated to enable the Student to make progress appropriate in light of her circumstances. The December 2023 IEP reflected the Student’s present levels of performance, and the goals were drafted to improve her spelling and writing. The goals were understandable and measurable. They included a baseline and target goals in spelling, passage production, and error rate. This was sufficient to allow a determination whether the Student was making progress toward these goals.

109. I further conclude that 160 minutes per month was sufficient SDI to meet the outlined goals in written expression and to allow for bi-weekly progress monitoring. While Dr. Dupuy recommended 60 minutes per day, the evidence does not support the conclusion that the Student required 60 minutes a day in SDI to make measurable progress in written expression.

110. As outlined above, February 2024 Gow admission testing reflected that while the Student scored 5.2 grade level equivalent in spelling, and 50th percentile in written language/contextual conventions, she also scored 84th percentile in story composition, and 75th percentile in spontaneous writing. This supports a conclusion that the Student had deficits in spelling, she had strengths in story composition and spontaneous writing. It is therefore concluded that she could make measurable progress in written expression, focusing on spelling and grammar, within the 160 minutes of SDI per month allocated by the District.

111. In sum, both the December 2023 draft IEP and the January 2024 IEP provided sufficient and appropriate SDI in written expression. Further, any delay in the District implementing the January 2024 IEP was reasonable. Therefore, the District has met its burden on these issues.

Issue b(xii) – Whether the District failed to draft goals that are appropriately ambitious in light of the Student’s unique needs and circumstances, and are reasonably calculated to provide the Student with a FAPE, for each area of disability-related need in every IEP from April 5, 2022, to the present

112. As outlined above, the two-year statute of limitations bars the Parent from challenging the appropriateness of the February 2022 IEP or the goals outlined in that IEP.

113. The District provided no goals in decoding or reading fluency in the February 2023 IEP. Therefore, it is concluded that the District failed to draft appropriate goals in these areas in the February 2023 IEP. The District has not met its burden on this issue.

114. Prior to receiving the July 2023 IEE, the District had no notice of additional disabilities in reading, math, written expression, or organization/behavior/study skills. Therefore, it is concluded that the District did not fail to draft appropriate goals in these areas in the February 2023 IEP. The District has met its burden on this issue.

115. The District created a December 2023 draft IEP and a January 2024 final IEP, outlining six specific goals in basic reading (decoding), basic reading (fluency), reading comprehension, written expression and math. As outlined above, I have determined

that both the December 2023 draft IEP and the January 2023 final IEP included appropriate and measurable goals in the areas of basic reading (decoding) and basic reading (fluency), reading comprehension, and written expression. Further, for the reasons outlined below, the math goals contained in both the December 2023 draft IEP and January 2024 final IEP were appropriate.

116. Both the December 2023 draft IEP and the January 2024 final IEP contained a math goal which was measurable, appropriately ambitious, and addressed the Student's unique needs. Both IEPs provided a goal that when given an addition/multiplication chart, and 20 math problems containing a variety of computations, the Student would correctly calculating the solution for 7 out of 20 equations with 35% accuracy, and increase her accuracy over the following 12 months to 16 out of 20 equations with 80% accuracy.

117. The math goals were based on baseline data of the Student's current math abilities obtained by the District. They allowed for reasonable measurements, and reasonable progress, in light of her unique needs. It is concluded that the District provided appropriate SDI to the Student in math in both the December 2023 draft IEP and the January 2024 final IEP. Therefore, the District has met its burden to defend this claim.

118. While it is clear that the Parent was not satisfied with the progress the Student was making at Franklin Pierce as of February 2024, "a student is not denied FAPE simply because the district's proposed educational plan provides less educational benefit than what a student's parent might prefer." *A.W. v. Tehachapi Unified Sch. Dist.*, 2019 U.S. Dist. LEXIS 37815 *21-22 (E.D. Cal., March 7, 2019).

119. It is determined that the goals in both the December 2023 draft IEP and the January 2024 final IEP were appropriately ambitious in light of the Students unique needs and circumstances and reasonably calculated to provide the student a FAPE for each area of disability related need. The District has therefore met its burden on this issue.

Issue b(xiii) – Whether the District failed to provide an appropriate secondary transition plan to the Student because the goals were not appropriately ambitious in every IEP from April 5, 2022, to the present

120. The Parent argues that the secondary transition plans offered in the Students February 2022 and February 2023 IEP were highly generalized without measurable standards. The Parent argues that these IEPs only included a goal of attending a culinary arts program and finding employment in culinary arts, and thus violated the IDEA.

121. The Parent also argues that the secondary transition plan offered in the District's December 2023 draft IEP and January 2024 IEP simply changed the goal to include attendance at a veterinary technician program, and employment in a veterinary office. The Parent acknowledges that this plan specified that the Student would receive SDI in basic reading, reading comprehension, written expression, and math calculation to help prepare her for attending a 2-year veterinary technician program. However, they argue that because SDI was insufficient in these areas, the transition plan did not help the Student make progress toward the transition goal.

Applicable Law

122. The IEPs of students who are 16 or older must contain "[a]ppropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills." WAC 392-172A-03090(1)(k)(i). They must also include the transition services, including courses of study, needed to assist the student in reaching those goals. *Id.*

123. Transition services are "a coordinated set of activities for a student eligible for special education" that are "focused on improving the academic and functional achievement of the student to facilitate his or her movement from school to post-school activities, including postsecondary education and employment." WAC 392-172A-01190(1)(a). C.F.R. § 300.43(a)(1).

124. The IDEA requires the district to invite a child with a disability to attend the child's IEP Team meeting if a purpose of the meeting will be the consideration of the postsecondary goals for the child and the transition services needed to assist the child in reaching those goals. C.F.R. §300.321(b)(1). Transition plans must be based on the student's individual needs, taking into account the student's strengths, preferences and interests, and include instruction, related services, community experiences, the development of employment and other post-school adult living objectives. WAC 392-172A-01190(1)(b); C.F.R. § 300.43(a)(2).

February 2022 IEP

125. As outlined above, the Parent cannot dispute the formation of the February 2023 IEP, and thus cannot dispute the transition plan outlined in that IEP. Therefore, I address the transition plans outlined in the February 2023 IEP, the December 2023 draft IEP and the January 2024 final IEP. The facts reflect the District provided an appropriate transition plan in each.

February 2023 IEP

126. The District developed the transition plan in the February 2023 IEP based on the Student's strengths, preferences and interests in a culinary arts program. The transition plan also included instruction, related services, community experiences, the development of employment and other post-school adult living objectives related to culinary arts.

127. As early as the February 1, 2022 IEP meeting, the Student indicated that she was interested in pursuing culinary arts. The February 2023 IEP and student survey continued to reflect that the Student wanted to work in the field of culinary arts. The February 2023 IEP identified a Secondary Transitional plan for the Student to enroll in culinary arts classes while at high school, explore culinary arts classes in the community while in high school, and attend the culinary arts program at PCSC as transition to employment after graduation.

128. It is determined that the transition goals in the February 2023 IEP included appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and the Student's expressed interests. The transition plan also included a course of study to reach those goals, including a plan that she attend culinary classes at Franklin Pierce and explore culinary arts classes at PCSC. The transitional plan also noted that the Student's career goals were changing, and that she needed time and resources to compare a culinary arts career to a vet tech career.

129. The IDEA requires that postsecondary transition goals be based on the student's interests, appropriate, and measurable. They must also include courses of study necessary to reaching those goals. The February 2023 transition plan met these requirements. Therefore, the District has met its burden on this issue.

December 2023 draft IEP and January 2024 IEP

130. The District prepared a December 2024 draft IEP which outlined a postsecondary transition plan identifying the Student's changed interests in pursuing a career in vet tech. The IEP transition plan indicated that the Student would pursue a Pre-Veterinary Technology Program at the PCSC, and then apply to a 2-year Veterinary Assistant program at a local college.

131. The Student attended the December 14, 2023 IEP meeting. At the meeting, the Parent suggested that the District remove her from her current vet tech program at PCSC, so that she could remain at Franklin Pierce and receive additional SDI in basic reading, reading comprehension, written expression, and math calculation.

132. The January 2024 IEP did not change any of the Student's transitional planning goals. Instead, rather than removing the Student from her chosen PCSC classes, the District worked with special education teachers and paraeducators to identify two periods on alternating A/B days (fifth period and eighth period), where the Student could receive SDI in a resource room on the Franklin Pierce campus. Thus, the District ensured that the Student's preferences remained in the IEP as her the post-secondary goals and outcomes. As outlined above, I find that the SDI instruction contained in both the December 2023 draft IEP and the January 2024 final IEP are appropriate. Therefore, they were appropriate to support the Student's goals to pursue a 2-year vet tech college program.

133. It is determined that the transition goals in both the December 2023 draft IEP and the January 2024 final IEP included appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and the Student's expressed interests. The transition plan also included a course of study to reach those. The transition plan was based on the student's interests, appropriate, and measurable and included courses of study necessary to reaching those goals. Therefore, the District has met its burden on this issue.

Whether the Parent is Entitled to Reimbursement for the 2024 Unilateral Placement at Gow

134. The Parent further argues that District failed to implement the IEP prior to the Student's unilateral placement at Gow. The Parent argue that the District "unreasonably delayed" implementation of the IEP until February 5, 2024. This argument fails as the record establishes that the District implemented the January 2024 IEP prior the Student's final day at the District, and that any delay in implementation was reasonable.

135. Parent who unilaterally enroll a student in a private school are entitled to reimbursement only if 1) the district placement violated the IDEA, and 2) the parents' private school placement is proper under the IDEA. *Florence County Sch. Dist. v. Carter*, 510 U.S. 7 (1993). Thus, parents who unilaterally change their child's placement do so at their own financial risk. *Burlington v. Dep't of Ed. of Mass.*, 471 U.S. 359, 374 (1985).

136. Parents seeking tuition reimbursement for a unilateral parental placement have the burden of proof, including the burden of persuasion and production, on the appropriateness of such placement. RCW 28A.155.260(2). Further, parents must give written notice to a school district of their intention to unilaterally place the student at

least ten business days (including any holidays that occur on a business day) prior to the removal of the student from the public school. WAC 392-172A-04115(4)(a)(ii).

137. The IDEA specifies that with regard to initial IEPs, special education and related services should be made available to the child “[a]s soon as possible following development of the IEP.” 34 C.F.R. §300.323(c)(2). Case law defines the term “as soon as possible,” and outlines guidelines for determining whether delay in implementing an IEP constitutes a violation of the IDEA.

138. In *D.D. v. N.Y. City Bd. of Educ.*, 465 F.3d 503 (2nd Cir. 2006), the court examined the meaning of the term “as soon as possible” as outlined in 34 C.F.R. §300.342,⁵³⁹ which provided: “States must implement a student's Individualized Education Program (IEP) as soon as possible after it has been developed.” In *D.D.*, the court rejected a strict construction of the term, and instead found it to be a flexible requirement, permitting delay between when the IEP is developed and when it is implemented:

"As soon as possible" is, by design, a flexible requirement. It permits some delay between when the IEP is developed and when the IEP is implemented. It does not impose a rigid, outside time frame for implementation. Moreover, the requirement necessitates a specific inquiry into the causes of the delay. Factors to be considered include, but are not limited to: (1) the length of the delay, (2) the reasons for the delay, including the availability of the mandated educational services, and (3) the steps taken to overcome whatever obstacles have delayed prompt implementation of the IEP. Nonetheless, just because the as-soon-as-possible-requirement is flexible does not mean it lacks a breaking point. "It is no doubt true that administrative delays, in certain circumstances, can violate the IDEA by depriving a student of his right to a 'free appropriate public education.'" *Grim*, 346 F.3d at 381.

D.D., 465 F.3d 514.

139. Here, the record reflects that any delay in implementing the IEP after the December 12, 2023, IEP meeting was reasonable based on the efforts of the District to draft an appropriate IEP for the Student.

140. As outlined above, at the December 12, 2023 IEP meeting, the Parent requested that the Student be provided 1:1 reading and specific literacy instruction,

⁵³⁹ 34 C.F.R. §300.342 has since been removed from the IDEA, but the court’s reasoning in *D.D.* is instructive.

suggested the Student be removed from her vet tech program at the PCSC to allow her to receive the extensive SDI minutes in reading instruction recommended by Dr. Dupuy, and objected to the teacher who would provide literacy instruction. In January 2024, after winter break, the District arranged for a special education paraeducator to provide the Student with 1:1 in reading instruction during eighth-period on B days, to be supervised by the special education director. The District also set up a meeting with the District literacy specialist. The Student informed her special education teacher that she would like to remain in the vet tech program at the PCSC.

141. On January 22, 2024, the Parent provided the District with 10-day notice of their intent to unilaterally place the Student at Gow if the District failed to provide FAPE to the Student.

142. On Friday, January 26, 2024 the District sent the January 2024 IEP to the Parent. The January 2024 IEP included updated math goals, and specified that instruction in basic reading (decoding), basic reading (fluency) and reading comprehension would be based on 8th grade level text, reflecting goal more closely aligned with Dr. Dupuy's recommendations and available progress monitoring materials.

143. Second semester began on Monday, January 29, 2024. During second semester, the Student met with Ms. Huff during eighth-period in Mr. Conant's office 2-3 times and received 1:1 SDI in reading. During these sessions, Ms. Huff used District resource reading curriculum with the Student. Mr. Conant observed the Student read aloud from the textbook, while Ms. Huff helped the Student with sounding out words. The Student last attended school in the District on February 6, 2024.

144. The Parent acknowledges that Mr. Conant and Ms. Huff provided the Student with 1:1 instruction in reading "for a couple of weeks" before she left school. The Parent asserts that the Student did not initially tell them that this instruction had occurred, and they did not learn about this 1:1 instruction until sometime after the Student transferred to Gow.

145. The record therefore establishes that the District provided the Student with SDI prior to the Student's unilateral placement at Gow. The record also establishes that any delay in implementation between the December 12, 2023, IEP meeting and when services were first provided on January 29, 2024, was reasonable and based on the District's efforts to provide an appropriate IEP and appropriate SDI to the Student. The District spent these weeks setting up a class schedule which met the Parent's request for 1:1 reading instruction for the Student, would provide increased SDI minutes in the special education setting, and also allowed the Student to continue with her vet tech

classes. A delay based on these considerations illustrates that the District implemented the January 2024 IEP “as soon as possible.”

146. In sum, the Parent has not met their burden to show that the District’s placement of the Student violated the IDEA at the time they unilaterally placed her at Gow.

Requests for Relief

147. Only material failures to implement an IEP violate the IDEA. *Van Duyn*, 502 F.3d 811 (9th Cir. 2007). A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child’s IEP. *Id.* at 821-22. See also, 20 USC §1415(f)(3)(E)(ii); WAC 392-172A-05105(2); 34 CFR §300.513(a)(2).

148. As found and concluded above, the District’s November 2023 reevaluation was sufficiently comprehensive to identify the Student’s special education and related services needs, and met the other requirements of the IDEA. Therefore, the Parent is not entitled to an IEE at public expense. The Parent is also not entitled to the requested relief of a schedule of IEP team meetings related to an IEE, or funding for all outside providers’ attendance and participation in such meetings.

149. As found and concluded above, the Parent has not met their burden to prove that FAPE was not available to the Student in the District at the time the Parent unilaterally placed the Student at Gow. Consequently, the issue of whether the Student’s placement at Gow is appropriate need not be reached. The Parent is not entitled to reimbursement for any costs associated with the Student’s unilateral enrollment at Gow.

150. As outlined above, District relied on Dr. Dupuy’s opinion that the Student has an SLD in reading decoding and fluency. Therefore, the Parent is entitled to reimbursement of Dr. Dupuy’s attendance at District meetings in the amount of \$481.25.

Compensatory Education and District Staff Training

151. Compensatory education is a remedy designed “to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place.” *Reid v. District of Columbia*, 401 F.3d 516, 524 (D.C. Cir. 2005), cited with approval in *R.P. v. Prescott Unif’d Sch. Dist.*, 631 F.3d 1117, 1125 (9th Cir. 2011). It is intended to place the student in the same

position they would have occupied if the District had honored its obligation to provide FAPE. *Id.*; Letter to Riffel, 34 IDELR 292 (OSEP 2000).

152. Compensatory education is an equitable remedy. It is subject to the discretion of the court after applying a fact-specific analysis. *Parents of Student W. v. Puyallup Sch. Dist.*, 31 F.3d 1489, 1497 (9th Cir. 1994). There is no formula to determine the amount of compensatory education to which a student is entitled. “Appropriate relief is relief designed to ensure that the student is appropriately educated within the meaning of the IDEA.” *Id.* (citations omitted).

153. As outlined above, the District did not offer any SDI in decoding or reading fluency in the February 2023 IEP, despite the fact that the District’s February 2022 reevaluation reflected the Student received “Low” scores in reading fluency, word recognition and decoding fluency (all in the 1st percentile), and these deficiencies had not been mitigated.

154. The record further shows that between February 2023 and when the January 2024 IEP was implemented, the District provided no SDI in decoding or reading fluency, and the Student remained impaired in these areas. The July 2023 IEE reflected the Student scored “Borderline” and “Extremely Low” in decoding (5th percentile, 3rd percentile and 0.1 percentile); “Extremely Low” in oral reading fluency (1st percentile and 0.4 percentile); and “Extremely Low” in silent reading fluency (9th percentile). Similarly, when the Student was admitted to Gow in early February 2024, she continued to test “Significantly Impaired” in phonetic decoding. She also tested at the 5.5 grade level (3rd percentile) in oral reading and decoding, and at the 3rd grade level (1st percentile) in reading fluency. This indicates that the Student continued to require SDI in decoding and fluency during the time period when it was not provided by the District, between February 2023 and when the January 2024 IEP was implemented.

155. It is concluded that the District’s failure to offer any SDI in decoding or reading fluency in the February 2023 IEP, caused a deprivation of educational benefits and denied the Student a FAPE because she continued to require SDI in decoding and reading fluency and remained impaired in these areas up and until she began receiving SDI in January 2024. Therefore, the Parent is entitled to compensatory education for the education the Student would have received, but for the District’s failure to provide appropriate FAPE in decoding and fluency.

156. As outlined above, in the December 2023 draft IEP and January 2024 final IEP provided 300 minutes of SDI per month to concurrently address both decoding and fluency. This amount of SDI was sufficient to address both areas. Because the Student

should have received SDI in fluency and decoding during the school months between February 2023 and January 2024, I conclude the Student is entitled nine months of the same SDI offered in the December 2023 draft IEP and January 2024 final IEP. This results in 300 minutes per month for nine months (2700 minutes/45 hours), of combined SDI in basic reading (decoding) and basic reading (fluency). The District should provide this SDI 1:1 to the Student, and it should be delivered by a special education teacher.

157. With respect to the Parent's request for training of District staff, the IDEA does not require compensatory education services to be awarded directly to a student, so school district staff training can be an appropriate remedy. *Park v. Anaheim Union High School Dist.*, 464 F.3d 1025, 1034 (9th Cir. 2006) (student, who was denied a FAPE due to failure to properly implement his IEP, could most benefit by having his teacher trained to properly do so).

158. As outlined above, the February 2023 IEP did not include any services in decoding or reading fluency, despite the fact that the District's February 2022 reassessment identified the Student as requiring services in these areas, and the Student's needs had not changed. The District did not conduct any follow up testing in reading fluency or decoding, or explain why it dropped SDI in fluency. Instead, the District added SDI in reading comprehension without any explanation, despite the fact that the February 2022 reassessment did not identify this as an area of deficiency. This indicates that the District may not have understood the purpose of IEP reviews or how to create appropriate IEP goals and SDI which reflect the data and recommendations contained in the District's own reassessments. If District staff were properly trained on the requirements of the IDEA, the District may not have made these mistakes. Therefore, the Parent is entitled to their requested remedy that District staff administrators receive training for this IDEA violation.

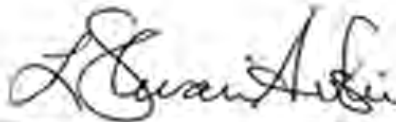
159. Within two months of the date of this order, the District shall provide two hours of training pertaining to (a) the IDEA's requirement of appropriate IEP goals and appropriate SDI; and (b) the IDEA's requirement and the District's procedures for IEP reviews. Training shall be provided to the following personnel: special education staff and school psychologists who work at, or who provide services to students who attend Franklin Pierce High School. The training shall be provided by a person(s) of the District's choosing who possesses the necessary training, education and experience to conduct such training and is not an employee of the District. The training may be provided by attorneys for the District if the District deems it appropriate.

ORDER

Based on the above findings of fact and conclusions of law, it is THEREFORE HEREBY ORDERED:

1. The District has established by a preponderance of the evidence that the November 3, 2023 reevaluation of the Student is appropriate. Consequently, the District is entitled to its requested remedy that the Parent is not entitled to an IEE at public expense.
2. The Parent is entitled to reimbursement of Dr. Dupuy's attendance at District meetings in the amount of \$481.25.
3. The Parent is entitled to their requested remedy that District staff administrators receive training for their failure to include services in basic reading (decoding) or basic reading (fluency) in the Student's February 2023 IEP, as set forth above.
4. The Parent is entitled to 2700 minutes (45 hours) of 1:1 SDI to be provided to the Student in basic reading (decoding) and basic reading (fluency), to be delivered by a special education teacher.
5. The Parent's remaining requested remedies are DENIED.

SERVED on the date of mailing.



L'Nayim Shuman-Austin
Administrative Law Judge
Office of Administrative Hearings

Right To Bring A Civil Action Under The IDEA

Pursuant to 20 U.S.C. 1415(i)(2), any party aggrieved by this final decision may appeal by filing a civil action in a state superior court or federal district court of the United States. The civil action must be brought within ninety days after the ALJ has mailed the final decision to the parties. The civil action must be filed and served upon all parties of record in the manner prescribed by the applicable local state or federal rules of civil procedure. A copy of the civil action must be provided to OSPI, Legal Services, PO Box 47200, Olympia, WA 98504-7200. To request the administrative record, contact OSPI at appeals@k12.wa.us.

DECLARATION OF SERVICE

I declare under penalty of perjury under the laws of the State of Washington that true copies of this document were served upon the following as indicated:

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Dated January 31, 2025, at Olympia, Washington.

Jazmyn Johnson

Representative
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cc: Administrative Resource Services, OSPI